

Appendix 1 – The Legal Framework

Contents

	Page No.
1.1 The Legal Framework	4
<u>Introduction</u>	
1.2 The Human Rights Act 1998	6
1.3 The Children Act 2004	8
1.4 The Childcare Act 2006	10
1.5 The Children Act 1998	11
<u>Children in Need & Family Support</u>	
<u>Definitions & Terms in the 1989 Children Act</u>	12
<u>The Welfare Checklist</u>	13
<u>Duties under the Children Act 1989</u>	14
<u>Interventions & Orders</u>	17
<i>General Principles</i>	
<i>The Orders that can be sought</i>	18
<u>Care Orders & Supervision Orders</u>	19
<u>Interim Care & Interim Supervision Orders</u>	
<u>Care Orders</u>	
<u>Supervision Order</u>	20
<u>Procedures in respect of Care/Supervision Orders</u>	21
<u>Private Law Proceedings – Section 8 Orders</u>	23
<i>Who can apply for Private Law Orders?</i>	
<u>Family Assistance Orders (s16)</u>	24
<u>Child Assessment Orders (s43)</u>	
<i>Grounds</i>	25
<i>Powers & Duties under the Order</i>	
<i>Duration</i>	
<u>Emergency Legal Orders</u>	26
<u>Emergency Protection Order (s44)</u>	
<i>Grounds</i>	27
<i>Powers & Duties under the Order</i>	
<i>Warrant</i>	28
<i>Duration</i>	

	<i>Appeal</i>	29
	<u>Police Protection Powers (s46)</u>	
	<i>Grounds</i>	
	<i>Powers & Duties</i>	
	<i>Contact</i>	30
	<i>Duration</i>	
	<i>Parental Responsibility</i>	
	<i>Ending the Police Protection</i>	
	<u>Recovery Order (s50)</u>	
	<i>Grounds</i>	31
	<i>Powers & Duties under the Order</i>	
	<u>Exclusion Requirements (s38a and s44a Children Act 1989)</u>	
	<u>Contact Order (s34, Children Act 1989)</u>	32
	<i>Who can apply for a specific Contact Order?</i>	33
	<i>Refusal to Allow Contact</i>	
1.6	Police & Criminal Evidence Act 1984 Section 17 (1)(e)	34
1.7	Family Law Act 1996 Part IV	35
	<u>Non-Molestation Orders (s42)</u>	
	<u>Ex-Parte Applications (s45)</u>	
	<u>Power of Arrest (s47)</u>	
1.8	Placements outside England & Wales	36
	<u>Children in Care</u>	
	<u>Looked After Children</u>	
	<u>Adoption</u>	
1.9	Sexual Offences Act 2003	38
	<u>Children & Young People: abuse of position of trust</u>	
	<u>Protecting 16 and 17 year olds</u>	
	<u>What are ‘positions of trust’?</u>	
	<u>The abuse of trust offences</u>	
	<u>Sexual Activity with a Child</u>	
	<u>Causing or Inciting a Child to engage in Sexual Activity</u>	39
	<u>Engaging in Sexual Activity in the presence of a Child</u>	
	<u>Causing a Child to watch a Sexual Act</u>	
	<u>Positions of Trust: Exceptions</u>	
	<u>Child Sex Offences: Exceptions</u>	

1.10	Sex Offender Orders – Crime & Disorder Act 1998	41
1.11	The Adoption & Children Act 2002	42
	<u>What are the provisions of the Act?</u>	
	<u>What are the changes that the Act makes to the Children Act 1989?</u>	43
1.12	Safeguarding Children in Education	44
1.13	Regulations of Investigatory Powers Act (RIPA) 2000	45
1.14	Other Legal & Ethical Consideration	46
	<u>Children left Unattended</u>	
	<u>Age of Consent</u>	
	<u>Criminal Liability</u>	
	<u>Interviewing a Youth</u>	47
	<u>Criminal Proceedings</u>	
	<u>Criminal Injuries Compensation</u>	48
1.15	Guidance of Offences Against Children	49
1.16	Disqualification from Working with Children	55
	<u>DFES List 99</u>	56
	<u>Notification Orders</u>	57
	<u>Risk of Sexual Harm Orders</u>	58
1.17	Fraser Guidelines	69
1.18	Public Law Outline	70

*This Appendix sets out the law as at 1 November 2006. Legal advice should be sought as appropriate to check whether the law has changed since these procedures have been published. Please note that, at the time of publication, the **Childcare Act 2006**¹ and the **Children and Adoption Act 2006**² are not yet in force.*

1.1 The Legal Framework

Introduction

- 1.1.1 This summary of current legislation is intended as a guide only and is not a substitute for professional legal advice.
- 1.1.2 Practitioners should seek advice from their own legal advisors about their professional responsibilities for safeguarding children.
- 1.1.3 These procedures have been developed in the context of:
- Ø The **Children Act 1989**³;
 - Ø The **Children Act 2004**⁴;
 - Ø **Working Together to Safeguard Children**⁵ (Department of Health 2006);
 - Ø The **Framework for Assessment of Children in Need and Their Families**⁶ (DoH 2000);
 - Ø The **Data Protection Act 1998**⁷ and the common law duty of confidentiality;
 - Ø The **Children (Care Leavers) Act 2000**⁸;
 - Ø **Education Act 2002**⁹;
 - Ø **Homelessness Act 2002**¹⁰;
 - Ø **Adoption and Children Act 2002**¹¹;
 - Ø **Children and Adoption Act 2006** (not in force at the date of publication).
- 1.1.4 and reflect the values and principles that underpin:
- Ø The 1989 United Nations Convention on the Rights of the Child¹² – in particular

¹ http://www.opsi.gov.uk/acts/acts2006/ukpga_20060021_en.pdf

² <http://www.opsi.gov.uk/acts/acts2006/20060020.htm>

³ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_1.htm

⁴ <http://www.opsi.gov.uk/acts/acts2004/20040031.htm>

⁵ <http://www.everychildmatters.gov.uk/files/AE53C8F9D7AEB1B23E403514A6C1B17D.pdf>

⁶ http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4003256

⁷ <http://www.opsi.gov.uk/ACTS/acts1998/19980029.htm>

⁸ <http://www.opsi.gov.uk/ACTS/acts2000/20000035.htm>

⁹ <http://www.opsi.gov.uk/ACTS/acts2002/20020032.htm>

¹⁰ <http://www.opsi.gov.uk/acts/acts2002/20020007.htm>

¹¹ <http://www.opsi.gov.uk/acts/acts2002/20020038.htm>

Article 19, which states that all children have the right to be protected from abuse and neglect, is reflected in the procedures.

- Ø The Human Rights Act 2000 – which incorporates the European Convention on Human Rights. This requires professionals involved to have clarity about why there is an intervention into a child's life and the planning and implementing of that action.

¹² <http://www.unhcr.ch/html/menu3/b/k2crc.htm>

- 1.1.5 Local Authorities also have a duty to carry out their functions with a view to safeguarding and promoting the welfare of children under s175¹³ of the **Education Act 2002**¹⁴. In addition, maintained (state) schools and Further Education (FE) institutions, including 6th Form Colleges, also have this duty under s175 towards their pupils (students under 18 years of age in the case of FE institutions). The same duty is put on Independent schools, including Academies and Technology Colleges (s157¹⁵ of the 2002 Act). In addition under s87¹⁶ of the **Children Act 1989**¹⁷ independent schools that provide accommodation for children also have a duty to safeguard and promote the welfare of those pupils. Boarding schools, residential special schools, and Further Education institutions that provide accommodation for children under 18, must have regard to the respective National Minimum Standards for their establishment. These can be found at: http://www.csci.org.uk/information_for_service_providers/national_minimum_standards/default.htm
- 1.1.6 The Children and Family Court Advisory and Support Service (CAFCASS) also has a duty under s12¹⁸(1) of the **Criminal Justice and Court Services Act 2000**¹⁹ to safeguard and promote the welfare of children involved in family proceedings in which their welfare is, or may be, in question.

¹³ <http://www.opsi.gov.uk/ACTS/acts2002/20032--q.htm#175>

¹⁴ <http://www.opsi.gov.uk/ACTS/acts2002/20020032.htm>

¹⁵ <http://www.opsi.gov.uk/ACTS/acts2002/20032--o.htm#157>

¹⁶ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_13.htm#mdiv87

¹⁷ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_1.htm

¹⁸ <http://www.opsi.gov.uk/acts/acts2000/00043--c.htm#12>

¹⁹ <http://www.opsi.gov.uk/acts/acts2000/20000043.htm>

1.2 The Human Rights Act 1998²⁰

- 1.2.1 Children are protected by a comprehensive framework of powers and responsibilities set out in the *Children Act 1989*²¹, its associated regulations and inter-agency guidance, *Working Together to Safeguard Children*²² and the *Framework for the Assessment of Children in Need and their Families*²³.
- 1.2.2 *Working Together 2006* incorporates the *Human Rights Act*, which became law in the UK in October 2000. The effect of the *Human Rights Act* was to incorporate the *European Convention on Human Rights* into British law.
- 1.2.3 The European Convention on Human Rights has been effective since 1950 and has eighteen articles and a number of protocols. Case law in the European Court of Human Rights has shown that seven articles in particular have relevance to the discharge of child protection functions. These are as follows:
- Ø Article 2 is an absolute right and requires that we respect the right of all individuals to life.
 - Ø Article 3 – Prohibition of Torture has been used by individuals over the years to challenge treatment they have received in institutions, including care institutions. It therefore has implications for the way that the public authorities treat children in their care.
 - Ø Article 4 – The Prohibition of Slavery and Forced Labour again is an absolute right and may have similar implications for the treatment of children as Article 3.
 - Ø Article 5 requires that public authorities treat individuals with respect for their liberty and security. This may have implications on an application for a secure accommodation order.
 - Ø Article 6 has been used by individuals to challenge the procedures adopted by authorities in reaching decisions. This has implications for child protection procedures.
- 1.2.4 The first part of Article 6 state, “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juvenile or the protection of private life of the party so require, or to the extent strictly necessary in the opinion of the Court and special circumstances where publicity would prejudice the interests of justice”.
- 1.2.5 The Article may affect child protection functions in the following areas:
- Ø Case Conferences and other decision-making forums, where decisions are made

²⁰ <http://www.opsi.gov.uk/ACTS/acts1998/19980042.htm>

²¹ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_1.htm

²² <http://www.everychildmatters.gov.uk/files/AE53C8F9D7AEB1B23E403514A6C1B17D.pdf>

²³ http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4003256

that affect a person's human rights, notably Article 8 – the right to respect for family and private life.

Ø The conduct of any civil proceedings involving children and families.

1.2.6 In considering whether Article 6 is being complied with, it is important that agencies are aware of when a determination is being made of the person's human rights. It must be remembered that such decisions are potentially made by case conferences, planning, strategy and core group meetings and even in some cases by individual team managers or other senior officers. Whilst it may appear that such decision-making forums cannot be regarded as "impartial tribunals" as is required by Article 6, steps can be taken to ensure that decision-making is fair and accountable in order to meet the standards set out in Article 6.

1.2.7 **Working Together to Safeguard Children 2006**²⁴ takes account of the Human Rights Act and, as a general rule; compliance with its requirements should ensure an acceptable standard of decision-making.

1.2.8 The following standards for conferences should be applied:

- Ø Explanation before the conference as to the structure, purpose and operation of a child protection conference to parents, involved family members and children of sufficient age and understanding.
- Ø Information given to parents and a mature child about legal advice and advocacy agencies and advise them of their right to have a support or advocate with them.
- Ø Provide parents, and mature children with written reports/information (including the outcome of the **s47**²⁵ investigation) in reasonable time in advance of the conference.
- Ø Allow parents equal access to all material placed before the conference.
- Ø Provide a clear record of recommendations of a conference, and the reasons for them, to parents and a mature child as soon as possible after the conference.

1.2.9 This article also provides that "it is unlawful for a public authority to act in a way which is incompatible with a convention right". Individuals who feel that a public authority has acted in breach of their human rights in some way may therefore have the right to take action against the public authority.

1.2.10 Article 7 - No Punishment without Legal Process and the need for proper adherence to child protection procedures. In court proceedings there is an emphasis on decisions being taken about children's lives without delay.

1.2.11 Article 8 - The right to respect for family and private life, insofar as this does not impinge on the human rights of others. Case laws of the European Court of Human Rights has established the right of Governments to enact and enforce child protection legislation and all existing UK legislation remains in force and binding on Local Authorities. It must not be assumed that intervention in family life in accordance with the Children Act is necessarily in breach of Article 8, but it must be shown that any intervention was in

²⁴ <http://www.everychildmatters.gov.uk/files/AE53C8F9D7AEB1B23E403514A6C1B17D.pdf>

²⁵ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_6.htm#mdiv47

accordance with the law and was proportionate to the difficulties being addressed.

1.3 The Children Act 2004²⁶

- 1.3.1 **Section 1**²⁷ provides for the establishment of a new Children’s Commissioner for England, who will also have a role across the UK for reporting on non-devolved matters, working closely with counterparts in Wales, Scotland and Northern Ireland. The Commissioner’s job will be to raise awareness of the best interests of children and young people and to report annually to Parliament, through the Secretary of State, on his findings.
- 1.3.2 **Section 2**²⁸ makes clear that the Commissioner will not act as a last court of appeal for individual cases. Instead the Commissioner will look at how bodies, including Government and the public and private sectors, listen to children and young people. The Commissioner will be able to highlight failures in complaints procedures and make recommendations for improvements.
- 1.3.3 **Section 3**²⁹ gives the Commissioner freedom to look at an individual case with wider implications, for the purpose of learning broader lessons to inform public policy. The first Commissioner, Professor Sir Albert Aynsley-Green, was appointed in July 2005.

Children’s Services in England – Part 2

- 1.3.4 **Section 10**³⁰ establishes a duty on Local Authorities to make arrangements to promote co-operation between agencies in order to improve children’s well-being, defined by reference to the five outcomes, and a duty on key partners to take part in those arrangements. It also provides a new power to allow pooling of resources in support of these arrangements.
- 1.3.5 **Section 11**³¹ creates a duty for the key agencies who work with children to put in place arrangements to make sure that they take account of the need to safeguard and promote the welfare of children when doing their jobs.
- 1.3.6 **Section 12**³² allows the Secretary of State to make regulations requiring Local Authorities to set up databases or indexes in respect of children. These will contain basic information about children and young people to help professionals in working together to provide early support to children, young people and their families. Other key agencies may also be required to provide information for use in the data base. The index will not hold any assessment or case information.
- 1.3.7 **Sections 13-16**³³ require that Local Authorities set up statutory Local Safeguarding Children Boards and that the key partners take part. The objective of the Board is to co-ordinate and review what is done by Board members to safeguard and promote the welfare of children in its area. Please see Section ? for further information

²⁶ <http://www.opsi.gov.uk/acts/acts2004/20040031.htm>

²⁷ <http://www.opsi.gov.uk/acts/acts2004/40031--b.htm#1>

²⁸ <http://www.opsi.gov.uk/acts/acts2004/40031--b.htm#2>

²⁹ <http://www.opsi.gov.uk/acts/acts2004/40031--b.htm#3>

³⁰ <http://www.opsi.gov.uk/acts/acts2004/40031--c.htm#10>

³¹ <http://www.opsi.gov.uk/acts/acts2004/40031--c.htm#11>

³² <http://www.opsi.gov.uk/acts/acts2004/40031--c.htm#12>

³³ <http://www.opsi.gov.uk/acts/acts2004/40031--c.htm#13>

- 1.3.8 **Section 17**³⁴ requires the Local Authority to prepare a **Children and Young People's Plan**³⁵ (CYPP) setting out its strategy for discharging its functions in respect of children and young persons. There will be no requirement for the Secretary of State to approve the plan and Local Authorities categorised as excellent under Comprehensive Performance Assessment will be exempt from the requirement.
- 1.3.9 **Sections 18**³⁶ & **19**³⁷ require Local Authorities to put in place a Director of Children's Services and Lead Member to be responsible for, as a minimum, education and children's social service functions. Local Authorities have discretion to add other relevant functions, for instance leisure or housing, to the role if they feel it is appropriate.
- 1.3.10 **Sections 20-24**³⁸ require an integrated inspection framework to be established by the relevant inspectorates to inform future inspections of all services for children. They also make provision for regular Joint Area Reviews to be carried out to look at how children's services as a whole operate across each Local Authority area.

Other provisions – Part 5

- 1.3.11 **Sections 44-47**³⁹ put stronger requirements on Local Authorities to manage and monitor the current statutory notification scheme for private fostering arrangements. They also allow for a registration scheme to be set up if the notification arrangements prove to be inadequate.
- 1.3.12 **Section 49**⁴⁰ allows for the secondary legislation to be made to bring in a minimum fostering allowance.
- 1.3.13 **Section 50**⁴¹ enables the Secretary of State to intervene to secure proper performance of a Local Authority's children's social service function where it is shown to be necessary. The Secretary of State has a similar power in respect of the Local Authority's education function under the **Education Act 1996**⁴².
- 1.3.14 **Section 52**⁴³ puts a duty on the Local Authority in its role as the corporate parent to promote the educational achievement of looked after children. This will ensure that decisions on issues such as placement and stability support better educational achievement.

³⁴ <http://www.opsi.gov.uk/acts/acts2004/40031--c.htm#17>

³⁵ [http://www.everychildmattersincountydurham.org/ecm/usp.nsf/Lookup/cyp%20plan/\\$file/cyp+plan.pdf](http://www.everychildmattersincountydurham.org/ecm/usp.nsf/Lookup/cyp%20plan/$file/cyp+plan.pdf)

³⁶ <http://www.opsi.gov.uk/acts/acts2004/40031--c.htm#18>

³⁷ <http://www.opsi.gov.uk/acts/acts2004/40031--c.htm#19>

³⁸ <http://www.opsi.gov.uk/acts/acts2004/40031--c.htm#20>

³⁹ <http://www.opsi.gov.uk/acts/acts2004/40031--f.htm#44>

⁴⁰ <http://www.opsi.gov.uk/acts/acts2004/40031--f.htm#49>

⁴¹ <http://www.opsi.gov.uk/acts/acts2004/40031--f.htm#50>

⁴² <http://www.opsi.gov.uk/acts/acts1996/1996056.htm>

⁴³ <http://www.opsi.gov.uk/acts/acts2004/40031--f.htm#52>

1.4 The Childcare Act 2006⁴⁴

(please see note at the start of this Appendix)

- 1.4.1 The Childcare Act 2006 places duties on the Local Authority to improve the well-being of young children in its area in partnership with the Strategic Health Authority and Primary Care Trust. There are specific duties to secure the provision of sufficient child care to enable parents to work or take up relevant training or education and to provide information about child care to parents.
- 1.4.2 These duties apply to children from birth until the 1st September after the child reaches the age of 5.

⁴⁴ http://www.opsi.gov.uk/acts/acts2006/ukpga_20060021_en.pdf
Durham LSCB Child Protection Procedures
Appendix 1 – Legal Framework

1.5 The Children Act 1989⁴⁵

Children in Need and Family Support

- 1.5.1 Part III of the Children Act 1989 is the basis for the law for the provision of services to children in need, including children in need of protection. Children in this respect are defined to be under the age of 18 years (**s105**⁴⁶).
- 1.5.2 The Act places a general duty on a Local Authority to safeguard and promote the welfare of children in their area who are in need and, so far as is consistent with that duty, to promote the upbringing of children by their families by providing a range and level of services appropriate to their needs. A Local Authority must take reasonable steps under this duty to prevent children in its area suffering ill-treatment or neglect.
- 1.5.3 A Child in Need means:
- Ø a child who is unlikely to achieve or maintain a reasonable standard of health or development without the provision of services under Part 3 of the Act; *or*
 - Ø a child whose health or development is likely to be significantly impaired without such services; *or*
 - Ø a child who is disabled.
- 1.5.4 A child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed.
- 1.5.5 A child who has been abused or is at risk of being abused, and therefore in need of protection, is considered to be a child in need.
- 1.5.6 The responsibilities towards children in need include the following duties:
- Ø To take reasonable steps to identify children in need.
 - Ø To take reasonable steps to prevent children suffering ill treatment or neglect.
 - Ø To assist the person to obtain alternative accommodation where a child living in the same premises is suffering or likely to suffer ill treatment at the hands of that person.
 - Ø To take reasonable steps to reduce the need to bring proceedings for either a Care or Supervision Order or other proceedings which might lead to them being placed in care.
 - Ø To make such provisions they consider appropriate for the following services to be available for children in need while they are living with their families:
 - Advice, guidance and counselling;

⁴⁵ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_1.htm

⁴⁶ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_13.htm#mdiv105

- Occupational, social, cultural and recreational activities;
- Travelling assistance to enable support services to be used;
- Assistance to enable the child and family to have a holiday;
- A duty to provide such family centres as the Local Authority considers appropriate.

Ø To provide an appropriate level of:

- day care for children in need aged 5 or under who are not yet attending school;
- care or supervised activities for children in need who are attending school, outside school hours and in school holidays.

1.5.7 **Family support** is defined as the strengthening of family functioning with a view to enabling the child's own family to provide long term care.

1.5.8 Family support must be given to families of children in need and the concept is based on the family having the primary responsibility for their children, that all agencies should promote the welfare of children through providing services in the context of their own communities, and the need for partnership between agencies and families.

1.5.9 There should be an approach where partnership is used to provide services to reduce the need for court proceedings. Where the service provision is not effective or accepted consideration must be given to legal intervention.

1.5.10 There will also be circumstances where immediate action may be needed to protect a child by court order or police protection.

Definitions and Terms in the 1989 Children Act

1.5.11 **Significant harm** is a key phrase in the Act and harm is defined as:

Ø **Ill treatment**, which includes sexual and physical abuse, and forms of ill treatment which are not physical such as emotional abuse.

Ø **Impairment of physical or mental health** (Health means physical or mental health);

Ø **Impairment of development** (Development means physical, intellectual, emotional, social or behavioural development);

Ø **The impairment may be suffered from seeing or hearing the ill**

Ø **Treatment of another, for example because of domestic abuse.**

1.5.12 In deciding whether a child has suffered harm because of his health or development, the child's health or development is compared to that which could be reasonably expected of a similar child.

- 1.5.13 The definitions of **safeguard** and **promote** within the parameters of the Children Act are defined in the **Assessment Framework for Children in Need and their Families**⁴⁷ (2000). The two need to be viewed as two sides of the same coin, with promotion having a wider, and more positive, action centred approach embedded in the philosophy of creating opportunities to enable children to have optimum life chances in adulthood, as well as ensuring they are growing up in circumstances consistent with the provision of safe and effective care.
- 1.5.14 **Safeguard** has two elements:
- i) a duty to protect children from maltreatment;
 - ii) a duty to prevent impairment.
- 1.5.15 The term **child** should be taken to include a child or young person under the age of eighteen years (unless otherwise specified); (**s105**⁴⁸ Children Act 1989).
- 1.5.16 The term **parent** always includes anyone with parental responsibility. In some contexts, it can also include a father without parental responsibility.
- 1.5.17 The term **family** includes any person who has parental responsibility for the child and any person with whom he has been living. In some contexts, it can also include a father without parental responsibility.
- 1.5.18 The term **he** could be taken to mean either he or she and has been used universally to mean child of either gender.
- 1.5.19 Although Children's Services has primary responsibility for children's welfare and protection this does not diminish the role of the other agencies or the need for inter-agency co-operation in the planning and provision of services for a child or family.

The Welfare Checklist

- 1.5.20 When considering applications for a Section 8 Order, a Care or Supervision Order, or an Education Supervision Order, the court must have regard to the matters below. Reference to the checklist increases the court's ability to do what is best for the child and decide whether or not to make an order, and if so, what order to make:
- Ø The child's wishes and feelings considered in the light of their age and understanding.
 - Ø The child's physical, emotional and educational needs.
 - Ø The likely effect on the child of any change in his/her circumstances.
 - Ø The child's age, gender, background and any other characteristics that the court considers to be relevant such as his/her race, culture, religion and language.

⁴⁷ http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4003256

⁴⁸ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_13.htm#mdiv105

- Ø Any harm the child has suffered or is at risk of suffering.
- Ø The capacity of the child's parents or anyone else the court considers to be relevant, to meet the child's needs.
- Ø The range of powers available to the court.

1.5.21 The list focuses on:

- Ø the needs of the child;
- Ø the child's own views; *and*
- Ø the options available to the court.

Duties under the Children Act 1989

1.5.22 **The Children Act 1989 places specific duties on agencies to co-operate in the interests of vulnerable children which includes children involved in prostitution.**

1.5.23 **Section 17**⁴⁹ (1) of the Children Act 1989 places a general duty on every Local Authority to provide a range of services appropriate to the needs of the child/young person in order:

- Ø to safeguard and promote the welfare of children in their area who are in need; *and*
- Ø to promote the upbringing of such children by their families, so far as is consistent with that duty, by providing a range of services appropriate to those children's needs.

1.5.24 Options for the child to live with a relative or friend on a private basis should be rigorously explored before consideration is given to admitting a child to public care. In some **exceptional** circumstances, the department may make payments from Section 17 funds to support a child's placement with relatives or friends for a time-limited period. (See **Department Policy on kinship care and Private Fostering**⁵⁰ for fuller details).

1.5.25 **Section 20**⁵¹ places a duty on the Local Authority to provide accommodation for any child in need within its area who appears to require accommodation because:

- Ø there is no-one with parental responsibility for him;
- Ø he has been abandoned or is lost;
- Ø the person who has been caring for him is prevented (whether or not permanently and for whatever reason) from providing him with suitable accommodation or care;

⁴⁹ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_4.htm#mdiv17

⁵⁰ Add hyperlink to attached document on Kinship Care & Private Fostering

⁵¹ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_4.htm#mdiv20

Version 2 – February 2009

Ø in the case of a child who is over 16, it considers that his welfare is likely to be seriously prejudiced if they do not provide accommodation.

- 1.5.26 **Provision of Accommodation for Children (Sections 22 to 23⁵² Children Act 1989)**
Except in a case of a child of 16 or over who wishes to be accommodated the accommodation arrangements is a voluntary arrangement between the Local Authority and the parent or other person with Parental Responsibility when it appears that it is the best solution for the child's welfare. Consequently such a person may end the arrangement by objecting to it continuing (provided he/she is willing and able to accommodate the child him/herself or to arrange for accommodation to be provided) and may at any time remove the child from accommodation.
- 1.5.27 Accommodation cannot be provided under Section 20 if a person with parental responsibility objects and is willing to provide or arrange for accommodation for the child. A child could only be accommodated in such circumstances if the person with a residence order in respect of the child, or has care of the child by virtue of the High Court's inherent jurisdiction, agrees to accommodation or the child is over 16 and agrees to being accommodated.
- 1.5.28 If a child is to be removed from accommodation at the request of a person with parental responsibility, good practice would dictate that this be planned, wherever possible.
- 1.5.29 Although section 20 does not expressly say so, it is likely that a child who has the maturity to make decisions about their own lives may discharge himself from care against the wishes of his parents.
- 1.5.30 **Section 27⁵³** provides that a Local Authority may request help from the following in exercising its functions under Part III of the Act:
- Ø any Local Authority;
 - Ø any Local Education Authority;
 - Ø any Local Housing Authority;
 - Ø any Health Authority, Special Health Authority, Primary Care Trust or National Health Service Trust; *and*
 - Ø any person authorised by the Secretary of State or the National Assembly for Wales,
- 1.5.31 This part of the Act places a duty on local authorities to provide support and services for children in need. The authority whose help is requested in these circumstances has a duty to comply with the request, provided it is compatible with its other duties and functions.
- 1.5.32 **Section 11⁵⁴** of the Children Act 2004 requires the above bodies to safeguard and promote the welfare of children whilst discharging their functions.
- 1.5.33 Under **section 12⁵⁵** of the Homelessness Act 2002, Housing Authorities are required, subject to their consent, to refer homeless persons with dependent children who are ineligible for homelessness assistance, or are intentionally homeless, to social services.

⁵² http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_4.htm#mdiv22

⁵³ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_4.htm#mdiv27

⁵⁴ <http://www.opsi.gov.uk/acts/acts2004/40031--c.htm#11>

⁵⁵ <http://www.opsi.gov.uk/acts/acts2002/20007--a.htm#12>

- 1.5.34 In such cases, if social services decides the child's needs would be best met by helping the family to obtain accommodation, they can ask the housing authority for reasonable assistance in this and the housing authority must respond.
- 1.5.35 **Section 37**⁵⁶ provides that where, in any family proceedings, a court considers that a Care Order or Supervision Order may be appropriate in respect of a particular child, it can direct the Local Authority to carry out an investigation into the child's circumstances.
- 1.5.36 When making the direction, the Court has the power to make an Interim Care or Interim Supervision Order.
- 1.5.37 The Local Authority must consider whether to
- (a) apply for a care or supervision order;
 - (b) provide services or assistance to the child or his family; *or*
 - (c) take any other action with respect to the child.
- 1.5.38 Following these enquiries, if the Local Authority decide not to seek a care or Supervision Order, they must provide a report to court within 8 weeks (or such other timescale directed by the court) and explain the reasons for this, what services and assistance will be provided and what other action is proposed. The Local Authority must also consider whether to review the case at a later date.
- 1.5.39 **Section 47**⁵⁷ places a duty on the Local Authority to make such enquiries as it considers necessary to enable it to decide whether it should take any action to safeguard or promote a child's welfare under the following circumstances:
- Ø where the Local Authority has reasonable cause to suspect that a child who lives, or is found, in its area is suffering, or likely to suffer, significant harm;
 - Ø where the Local Authority is informed that a child who lives, or is found, in its area is the subject of an Emergency Protection Order;
 - Ø where the Local Authority is informed that a child who lives, or is found, in its area is in Police Protection.
 - Ø where the Local Authority is informed that a child who lives, or is found, in its area has contravened a ban imposed by a curfew notice under a local child curfew scheme.
- 1.5.40 The enquiries must examine the following questions:
1. Whether the Local Authority should make an application to the court or exercise any of its other powers with respect to the child; *or*
 2. The child is subject to an EPO but is not in accommodation provided by or on behalf of the Local Authority, whether it would be in his/her best interests to be so accommodated whilst the EPO is in force; *or*

⁵⁶ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_5.htm#mdiv37

⁵⁷ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_6.htm#mdiv47

3. If a child is in Police Protection to apply for an EPO in the child's best interests.

1.5.41 The Local Authority must take steps to obtain access to the child unless satisfied that there is already sufficient information about him/her.

- 1.5.42 If the Local Authority is refused access to the child or information about his/her whereabouts, then the Local Authority must apply for an order unless satisfied that the child's welfare can be satisfactorily safeguarded in some other way.
- 1.5.43 If the Local Authority concludes that it should take action to safeguard or promote the child's welfare then it has a duty to take that action.
- 1.5.44 If the Local Authority decides that it should not apply for any order then it must decide whether the case should be reviewed at a later date.
- 1.5.45 If a court is already considering private proceedings in relation to a child, and the possibility of making a Care or Supervision Order, it may direct the Local Authority to carry out an enquiry.

Interventions and Orders

General principles

- 1.5.46 The child's welfare is the paramount consideration for the court when determining any question regarding the upbringing of a child.
- 1.5.47 In most proceedings, including care, supervision or section 8 proceedings the court must have regard for the following factors, termed the "welfare checklist", when considering an application. The court does not have to go through the checklist for an Emergency Protection Order, Secure Accommodation Order or Child Assessment Order but is still required to have the child's welfare as its paramount consideration.
- 1.5.48 The welfare checklist contains the following matters. It is not exhaustive and the Court can have regard to any other factors that it considers relevant to the child's welfare.
- Ø the ascertainable wishes and feelings of the child concerned (according to age and understanding);
 - Ø his emotional, physical and educational needs;
 - Ø the likely effect on the child of any change in his circumstances;
 - Ø his age, sex, background and any of his characteristics which the court considers relevant;
 - Ø any harm suffered or risk of suffering;
 - Ø how capable his parents and any other person considered relevant to the court, is of meeting the child's needs;
 - Ø the range of powers available to the court under the Act in the proceedings in question.
- 1.5.49 **The court will only consider an order if it is better for the child to do so than not. There is a presumption that delay in determining any question with respect to the care of a child is likely to prejudice the welfare of that child.**

- 1.5.50 The application of the Children Act 1989 has to be considered in the context of the Human Rights Act 1998. Public Authorities such as the Local Authority, Health bodies and the courts must consider the human rights of both the parents and the child when making a decision, although the welfare of the child will prevail where there is conflict. Any interference with a person’s human rights must be permitted under the law and limited to the action needed to meet the reason for the interference.
- 1.5.51 Failure to properly canvas or take into account the wishes and feelings of a child, regardless of age, may be a breach of the Human Rights Act.
- 1.5.52 Proceedings under the Children Act will usually be issued in the Magistrates’ Court although there is discretion to transfer the proceedings to the County Court or High Court where the proceedings are exceptionally grave, important or complex, or because of the likely length of the hearing.

The Orders that can be sought

Care Orders & Supervision Orders (s31⁵⁸)

- 1.5.53 A Care Order or Supervision Order can only be sought by the Local Authority or the NSPCC. An application for a Care or Supervision Order will generally be necessary where there is sufficient risk of the child suffering significant harm and the Local Authority needs the powers available under the order to carry out its plan to protect the child.
- 1.5.54 A Full Care Order lasts up to the child’s 18th birthday, although a young person who is 17 years of age (16 if married) cannot become the subject of a Care or Supervision Order.
- 1.5.55 In order to obtain a care or Supervision Order, the Local Authority must satisfy the Court, on the balance of probabilities, that the child is suffering, or is likely to suffer, from significant harm, and that this is attributable to:
- Ø the care being given to the child, or likely to be given if an order is not made, not being what it would be reasonable to expect a parent to give to him; or
 - Ø the child being beyond parental control.
- 1.5.56 These are known as the “threshold criteria”.
- 1.5.57 The criteria for a care or supervision order are the same. The circumstances and the needs of the child will determine which is more appropriate.
- 1.5.58 The court is not obliged to make an Order if the threshold criteria are met. The court must consider whether an order is necessary in order to promote the welfare of the child. In doing so, the Court will consider the welfare checklist referred to above.

⁵⁸ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_5.htm#mdiv31
Durham LSCB Child Protection Procedures
Appendix 1 – Legal Framework

Interim Care & Interim Supervision Orders

- 1.5.59 The making of an interim Care Order gives the Local Authority shared parental responsibility with the parents.
- 1.5.60 The initial Interim Order can last up to 8 weeks. Further Interim Orders can be granted for up to 4 weeks. There is no limit to the number of consecutive Interim Orders. Interim Supervision Orders (but not interim care orders) can be made alongside interim Residence Orders.
- 1.5.61 Delay in proceedings must be minimised and the court alerted to potential sources of delay. It is expected that the final hearing in care cases will be held within 40 weeks of the start of the proceedings
- 1.5.62 In order to make an Interim Order, the court has to be satisfied that there are reasonable grounds for believing that the threshold criteria are met.
- 1.5.63 An exclusion requirement can be included in an Interim Care Order if certain criteria are met. Emergency Legal Orders.

Care Orders

- 1.5.64 When a Care Order is in force, parental responsibility is shared by the Local Authority and the parent(s) with parental responsibility. However, the Local Authority may limit the exercise of parental responsibility by the parent(s) in order to safeguard or promote the welfare of the child.
- 1.5.65 However, the Care Order does not in itself allow the Local Authority:
- Ø to cause the child to be known by a new surname;
 - Ø to remove the child from the United Kingdom (except by the Local Authority itself for a period of less than one month).
- 1.5.66 In order to do either of these things, the Local Authority would need the written consent of every person with parental responsibility for the child or, if that is not forthcoming, the leave of Court.
- 1.5.67 There is a separate procedure where the Local Authority intends to arrange for the child to live outside England and Wales on a longer-term basis.
- 1.5.68 The Care Order does not allow the Local Authority to cause the child to be brought up in any religious persuasion other than that in which he would have been brought up if the order had not been made.
- 1.5.69 When a child is the subject of an interim or final care order, the Local Authority must promote reasonable contact between the child and his parents and other relevant people.

1.5.70 A Care Order can be discharged by:

- Ø adoption;
- Ø the making of a Residence Order;
- Ø the making of a Supervision Order;
- Ø the making of a Safeguarding Order;
- Ø the Court discharging the order on the application of the child, Local Authority, or any person with parental responsibility for the child.

1.5.71 Otherwise, the Care Order will continue until the child reaches the age of 18.

1.5.72 **The decision to apply for to discharge the order is made at a Departmental Meeting following a recommendation at the child's Looked After Review.**

Supervision Order

1.5.73 A Supervision Order places a duty on the supervisor:

- Ø to advise, assist and befriend the supervised child;
- Ø to take such steps as are reasonably necessary to give effect to the order; *and*
- Ø to consider seeking the variation or discharge of the order if it is not complied with or may no longer be necessary.

1.5.74 **The Supervision Order may require the supervised child to comply with directions given by the supervisor requiring him to:**

- Ø live at a specified place for a specified period;
- Ø present himself at a specified time and place to a specified person;
- Ø participate in specified activities at specified times.

1.5.75 With his consent, the Supervision Order may require a person with parental responsibility for the child, or any other person with whom the child is living, to take all reasonable steps to ensure that the supervised child complies with these directions or to attend himself for specified activities.

1.5.76 **In certain circumstances, the Supervision Order may require the supervised child to attend for psychiatric and medical examination or treatment. Where the child is of sufficient understanding, he must consent to this requirement.**

1.5.77 A Supervision Order lasts for one year, unless a shorter period is stipulated. It is possible to extend a Supervision Order before it runs out, up to a maximum of 3 years from the date of the original order. A Supervision Order expires when a child reaches 18 years of age.

1.5.78 A Supervision Order can be discharged by:

- Ø a Care Order;
- Ø the Court discharging the order on the application of the supervisor, the child, or any person with parental responsibility for the child.

Procedures in respect of Care/Supervision Orders

1.5.79 **The decision to apply for an Order must be taken in the context of a **Child Protection plan**⁵⁹. A decision would normally be taken in the context of multi agency work, and after multi agency assessment and consultation with all interested parties.**

1.5.80 The decision by the Local Authority to institute legal proceedings will be taken at a Departmental Meeting. The views of the parents, other relevant adults and the child (subject to their age and understanding) should be made known at the departmental meeting and they should be informed promptly of the outcome of the meeting.

1.5.81 If proceedings are to be started, the following steps need to be taken:

- Ø The first hearing will be held no more than six working days after the commencement of the proceedings. The social worker will need to attend the hearing.
- Ø The social worker must prepare a statement and a social work chronology for the first Court hearing. The core or initial assessment may also be filed, along with any statements from other professionals involved with the family that are appropriate. These must be filed at Court by the third working day after the commencement of the proceedings.
- Ø The statement will need to set out the precipitating incidents and relevant background information, the initial proposals for the child and the initial proposals for further assessment of the parties.
- Ø The social work chronology will contain a succinct summary of the significant dates and events in the child's life in chronological order.
- Ø The statement and chronology are likely to include information received from other professionals, such as the police, a paediatrician or health visitor. The social worker will need to consider whether the consent of any person is needed for the use of such information, and also whether it would be more appropriate to ask a professional to provide a statement direct. This should be discussed with the Local Authority solicitor.
- Ø The statement and chronology will be seen by all parties to the proceedings. This will always include the mother and will often include the father. The social worker must discuss the reason for the proceedings and the interim plan with parents, the child (subject to their age and understanding) and any other relevant adults after the Departmental meeting so that they are aware of the position before the court

⁵⁹ Add hyperlink to 5.5 of Section 5 of these procedures
Durham LSCB Child Protection Procedures
Appendix 1 – Legal Framework

- 1.5.82 Following the first Court appointment, there will normally be a series of interim Directions Appointments to consider and arrange any further work that is needed before a final hearing can be held to resolve the long-term plans for the child. These Court appointments will also deal with interim issues such as contact.
- 1.5.83 The Court will appoint a Children’s Guardian to represent the child’s interests during the proceedings. The Children’s Guardian has a right of access to the social work files, including information that has been provided by other agencies.
- 1.5.84 The Local Authority will need to have a twin-track plan during Care Proceedings. Consideration must be given to options such as placement within the extended family, an alternative long-term placement or permanency through adoption, in case it is not possible for a child to live with his parent(s) in the long-term.
- 1.5.85 It is important that these contingencies have been fully explored by the time of the final hearing to avoid delay in resolving the child’s future. The social worker will be responsible for progressing any assessments that may be required of alternative carers, as well as any referral to the Fostering or Adoption Panel. This work needs to be undertaken alongside work to assess the potential of the parents to care for the child.
- 1.5.86 The Court will set a date for the Final Hearing, allowing time for the assessment work to be concluded. The final hearing will be held not more than 40 weeks after the start of the Care Proceedings. Any delay beyond this will need to be formally approved by the Court. The Local Authority will be directed to file a Final Statement along with a final care plan for each child.
- 1.5.87 The social worker will need to convene a further Departmental Meeting to allow the Local Authority to review the position and decide on the long-term plan for the child. This should involve the social worker and the solicitor. The social worker should consider whether any other professionals have had significant involvement with the child and discuss with the Chairperson whether they should attend.
- 1.5.88 The timing of this second Departmental Meeting to be held once all relevant information is available from assessments that have been undertaken since the proceedings began. However, it also needs to allow time for the preparation of the Final Statement and Care Plan in line with the Court timetable and for any procedural steps that need to be taken, such as putting a plan for adoption to the area Adoption Panel for approval.
- 1.5.89 Following the Departmental Meeting, the social worker will complete the final statement and final care plan. The Final Statement and Care Plan will be filed at Court and served on the parties. The social worker should advise the parents, other relevant adults and the child (subject to their age and understanding) of the plan as soon as possible after the Departmental Meeting.

1.5.90 There are four main remedies available to private individuals with regard to a child's welfare:

- Ø Contact Order, which allows the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other. This cannot be sought by a Local Authority;
- Ø Prohibited Steps Order to prevent someone from doing something they might normally do in fulfilling parental rights without the consent of the court;
- Ø Residence Order means an order settling the arrangements to be made as to the person with whom a child is to live. This cannot be sought by the Local Authority; *and*
- Ø Specific Issue Order means an order giving directions for the purpose of a specific question e.g. for medical treatment, or assessment.

Who can apply for Private Law Orders?

1. A Local Authority can apply for a Prohibited Steps Order or a Specific Issue Order but not for a Residence or Contact Order.
2. The court can make a Family Assistance Order for up to six months requiring a Probation Officer or Social Worker to advise and assist any member of the family (if they consent). This order will usually only be made in private proceedings.

1.5.91 The Local Authority may seek a Prohibited Steps Order or Specific Issues Order but not where the child is subject to an Interim or Full Care Order. It cannot seek a Residence Order or Contact Order.

1.5.92 With the exception of a Residence Order, these orders cannot be made in respect of a child who is the subject of an interim or final care order. If a Residence Order is made this will discharge the care order (interim or final).

1.5.93 The **Children and Adoption Act 2006**⁶⁰ enables the Court to make directions or impose conditions when dealing with an application for a contact order, requiring a person to take part in an activity that promotes contact with the child. Please see the note at the start of this Appendix about the implementation of the Act.

1.5.94 The Court may also make a Special Guardianship Order. This is an alternative to a Residence Order or an adoption order. The order would secure a child with a long-term carer and provide the Special Guardian with parental responsibility. The birth parents will retain parental responsibility but, subject to any other Court orders, the Special Guardian is entitled to exercise parental responsibility to the exclusion of anyone except another Special Guardian. This is likely to be more appropriate than adoption where, for example, the child is to be in the long-term care of a member of the extended family or other carer but continues to have direct contact and an ongoing relationship with the parents.

⁶⁰ <http://www.opsi.gov.uk/acts/acts2006/20060020.htm>

- 1.5.95 The Local Authority will not be a party to proceedings for residence orders or contact orders and would not normally be involved in such proceedings. In a contested case, the Court would appoint a Children and Family Court Reporter if it required an independent view on the interests of the child in question.
- 1.5.96 Where, however, the Local Authority has had a significant involvement with the family, the Court may direct it to produce a report under [section 7⁶¹](#) of the Children Act 1989. The direction will specify the purpose of the report but it will usually be required to ensure that there is a clear understanding of the Local Authority's involvement with the family. The social worker providing the report may need to attend the final hearing to give evidence.

Family Assistance Orders ([s16⁶²](#))

- 1.5.97 The Court may make a Family Assistance Order in any family proceedings. The effect of the order is to require either CAFCASS or the Local Authority to advise, assist and befriend the child, a parent or any other person with whom the child lives or who has a contact order in respect of the child.
- 1.5.98 The order is made of the Court's own volition. Any person named in the order must consent, except the child. The consent of the Local Authority is not needed where the child lives or will live in its area.
- 1.5.99 The [Children and Adoption Act 2006](#) extends the maximum period of the order to 12 months. If a contact order is also in force, the Family Assistance Order may also require the Local Authority to advise and assist on establishing, improving and maintaining contact to specified people. Where a [section 8⁶³](#) order is in force, the Family Assistance Order may direct the Local Authority to report to the court on specified matters relating to the section 8 order, including whether the section 8 order ought to be varied or discharged.
- 1.5.100 Please see the note at the start of this Appendix about the implementation of the 2006 Act.

Child Assessment Orders ([s43⁶⁴](#))

- 1.5.101 A Child Assessment Order may be needed in order to progress an investigation into possible significant harm where there is non-co-operation by the child's parents or carers.
- 1.5.102 When considering an application for a Child Assessment Order, it will also be important to consider whether the concerns are such that an alternative order, such as a Care Order or Emergency Protection Order, would be more appropriate.
- 1.5.103 A failure to produce the child for assessment under an order would add to the concerns for the child and an Emergency Protection Order or Care Order may be needed. The Court can make an Emergency Protection Order of its own accord on application for a Child Assessment Order.

⁶¹ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_2.htm#mdiv7

⁶² http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_3.htm#mdiv16

⁶³ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_3.htm#mdiv8

⁶⁴ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_6.htm#mdiv43

Grounds

- Ø The applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm; **and**
- Ø An assessment of the child's health, development or of the way in which the child has been treated is required to enable the applicant to determine this question; **and**
- Ø It is unlikely that such an assessment will be made or be satisfactory in the absence of the order.

Powers and Duties under the Order

- 1.5.104 Any person who is in a position to do so is required to produce the child.
- 1.5.105 Any person who is in a position to produce the child must comply with any directions specified in the Order.
- 1.5.106 The child may be kept away from home for the purpose of assessment if specified in the Order. The period of time that the child may be kept from home will also be specified in the order.
- 1.5.107 The applicant must give notice of the application to parents, those with parental responsibility, carers, anyone with a Contact Order and the child.
- 1.5.108 Where the child is of sufficient age and understanding the child may refuse to submit to a medical or psychiatric examination or other assessment.

Duration

- 1.5.109 The Order can be for up to seven days from the date specified in the Order.

Secure Accommodation Orders

- 1.5.110 Secure accommodation is defined as accommodation provided for the purpose of restricting liberty.
- 1.5.111 A child who is being looked after by the Local Authority cannot be placed in secure accommodation unless:
- Ø He has a history of absconding and is likely to abscond from any other description of accommodation **and**, if he absconds, he is likely to suffer significant harm; *or*
 - Ø He is likely to injure himself or others if kept in any other type of accommodation.
- 1.5.112 The criteria are different for children remanded to Local Authority care and charged with certain offences, when the test is whether the child is likely to abscond from non-secure accommodation or is likely to injure himself or others if kept in non-secure accommodation.

- 1.5.113 If a child is aged under 13, he cannot be placed in secure accommodation without the prior approval of the Secretary of State. This would need to be obtained before any application was made. Government guidance states that a decision to apply for a secure order should be made at Assistant Director level or above.
- 1.5.114 If the Court is satisfied that the criteria are met, it must make a secure accommodation order. It must also have the child's welfare as its paramount consideration when deciding what order to make and, in particular, how long the secure accommodation order will last. The Local Authority will need to demonstrate that the secure placement will offer appropriate assistance and support as part of a plan for the child to return to an open placement as soon as possible.
- 1.5.115 The maximum length of a secure accommodation order at the first application is three months. If any further application is made, the maximum length of any subsequent order is six months.
- 1.5.116 A Secure Accommodation Order permits the child to be kept in secure accommodation but does not make this mandatory. If the Local Authority is satisfied that the child no longer meets the relevant criteria at any stage during the life of the order, it is under a duty to end the placement and move the child to non-secure placement. There are additional requirements on the Local Authority to review the need for the secure placement within one month of the start of the placement and a maximum of every three months thereafter. This review must include at least one person who is independent of the Local Authority.
- 1.5.117 The Local Authority has the limited power to place a child in secure accommodation without Court authority for a period of up to 72 hours in any period of 28 consecutive days. In order to this, it must be satisfied that the statutory criteria are met. In practice, this power would be used when a secure bed had been obtained and there was a need to place the child in the secure accommodation to ensure that the child does not abscond and place himself at further risk before the scheduled Court hearing.
- 1.5.118 **A secure accommodation order does not give the Local Authority parental responsibility. A parent with parental responsibility would be able to remove the child from the secure placement if he wished. In order to prevent removal, the Local Authority would need to seek a Care Order. In addition, a child over 16 who is not the subject of a Care Order may be able to discharge himself from the secure placement.**

Emergency Legal Orders

Emergency Protection Order (s44⁶⁵)

- 1.5.119 An Emergency Protection Order is most appropriate where harm or suspected harm is serious and urgent action needs to be taken to remove or retain a child in a safe place, or where access is being denied and there is a risk of serious harm to the child. This will ensure their short-term protection.
- 1.5.120 This order is designed for use in emergency situations and lasts for a limited period. The applicant would need to seek an alternative order at the expiry of the emergency

⁶⁵ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_6.htm#mdiv44
Durham LSCB Child Protection Procedures
Appendix 1 – Legal Framework

protection order if there was a need to protect the child on a longer-term basis.

1.5.121 The applicant may be any person who has serious concerns about the welfare of a child and immediate action is deemed necessary. In reality, it is usually a Local Authority or NSPCC social worker.

Grounds

1.5.122 The court may make an Emergency Protection Order (EPO) only if it is satisfied that:

- Ø there is reasonable cause to believe that the child is likely to suffer significant harm if he is not removed, or does not remain where he is;
- Ø where the applicant is a Local Authority, enquiries are being made with respect to the child under **Section 47⁶⁶** (1) (b) and those enquiries are being frustrated by access being unreasonably restricted or denied, and it is required urgently; *or*
- Ø Other authorised persons may apply if they have reasonable cause to believe the child is suffering or likely to suffer significant harm, they are making enquiries relating to the child's welfare and their access is being unreasonably denied as in bullet point 2 above.

1.5.123 **In particularly urgent cases, the applicant may ask the Court to deal with the application in the absence of the parent(s) or any other person with parental responsibility for the child. However, given the parents' right to a fair hearing under Article 6 of the European Convention on Human Rights, the Court will need to be satisfied that it is essential to proceed in the absence of the parents in order to meet the needs of the child.**

1.5.124 Recent case law has made it clear that an Emergency Protection Order will only be justified where the child is at risk of imminent danger. Save in wholly exceptional cases, parents must be given adequate prior notice of any application by a local authority for an Emergency Protection Order. They must also be given proper notice of the evidence that the local authority is relying upon. No Emergency Protection Order should be made for any longer than is absolutely necessary to protect the child. Where the Emergency Protection Order is made in the absence of the parents, the initial order should be made for the shortest possible period commensurate with the preservation of the child's immediate safety.

Powers and duties under the Order

- Ø A person seeking access shall produce authenticated documentary evidence of identity.
- Ø The Order requires any person who is in a position to produce the child to do so if required.
- Ø It authorises the removal of the child to accommodation provided by the applicant where necessary in order to safeguard the welfare of the child.
- Ø It prevents the removal of a child from hospital or other place in which he was accommodated prior to the making of the order.

⁶⁶ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_6.htm#mdiv47

- Ø An exclusion requirement can be included in an order.
- Ø It gives the applicant parental responsibility for the child.
- Ø The court has the power to give direction in respect of:
 - Contact between the child and any named person. Subject to any direction given, reasonable contact must be allowed between the child and his parents (see below);
 - Medical or psychiatric examination, or other assessment of the child. (This can be refused by the child if of sufficient age, understanding and maturity);
- Ø The Emergency Protection Order must be served on the child, parents, and persons with parental responsibility, or persons who the child was living with within 48 hours of the order being made.
- Ø Under **s48**⁶⁷, the Court can authorise a search of specified premises for a child or any other child suspected to be on those premises.

1.5.125 When an Emergency Protection Order is in force and it appears that the child is no longer in danger, then there is a duty to return/not to remove the child.

Warrant

1.5.126 The court may issue a Warrant of Assistance authorising the police to assist, using force if necessary, if the applicant has been (or is likely to be) prevented from exercising the powers of an Emergency Protection Order by being refused entry to premises and/or access to the child.

1.5.127 The police officer exercising the Warrant may be accompanied by a GP, Nurse or Health Visitor if he chooses.

1.5.128 In extreme circumstances, where there is a risk to life and limb, the police may exercise their powers of Police Protection under Section 17 of the Police and Criminal Evidence Act 1984 to enter and search the premises. This can be authorised by a Designated Officer of Inspector rank.

Duration

1.5.129 The Emergency Protection Order can be granted for a maximum of 8 days and can be extended only once for a further 7 days if it is felt that the child is likely to suffer significant harm if the order is not extended. **Home Office Circular 44**⁶⁸ (2003) states that following the exercise of Police Protection; the LA should seek a court order as soon as possible. In most cases this should within a matter of hours and they should only extend to 72 hours in exceptional cases.

⁶⁷ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_6.htm#mdiv48

⁶⁸ <http://www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/18763f1735f979d680256d8a004c9e9b?OpenDocument>
Durham LSCB Child Protection Procedures
Appendix 1 – Legal Framework

1.5.130 The Local Authority would need to consider applying for a Care Order if it was necessary to retain parental responsibility for a longer period in order to protect the child.

- 1.5.131 There is no appeal against any matter relating to an Emergency Protection Order.
- 1.5.132 A parent could, however, apply to have the order discharged, unless he was notified of the hearing or was present. An application to discharge the order can only be considered by the Court after 72 hours have elapsed since the making of the order.

Police Protection Powers (s46⁶⁹)

- 1.5.133 Police Protection is used in extremely urgent situations where there is insufficient time to apply to Court for an Emergency Protection Order and the Police are present. Police Protection under Section 17 of the Police and Criminal Evidence Act 1984 to enter and search the premises. If it is necessary to remove a child from his or her family, the powers under **Section 44**⁷⁰ of the 1989 Children Act (Emergency Protection Order) should be used, wherever appropriate.

Grounds

- 1.5.134 A police officer has powers to remove a child under Police Powers of Protection where he has reasonable cause to believe that a child would otherwise be likely to suffer significant harm. He may:
- a. remove the child to suitable accommodation and keep him there, *or*
 - b. take such steps as are reasonable to prevent the child's removal from any hospital, or other place in which he is being accommodated.
- 1.5.135 There are no powers of search under this section.

Powers and Duties

- 1.5.136 The police officer should, as soon as reasonably practicable, advise the Local Authority in whose area the child was found of action taken and the reason for doing so. He should also advise the authority where the child is ordinarily resident, of the place of accommodation. The Local Authority must follow child protection procedures and make enquiries under **Section 47**⁷¹ of the Act. A Strategy Meeting will take place to discuss how the future protection of the child can be ensured.
- 1.5.137 The police officer must advise the child (if of sufficient age and understanding) what has happened and proposed future action and ascertain the wishes and feelings of the child.
- 1.5.138 A Designated Officer of the rank of Inspector must enquire into the case. The Designated Inspector may apply for an Emergency Protection Order whilst the child remains in Police Protection.
- 1.5.139 The Police officer must inform the parents, anyone else with parental responsibility and persons with whom the child was living immediately before the powers were used, of the steps taken.

⁶⁹ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_6.htm#mdiv46

⁷⁰ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_6.htm#mdiv44

⁷¹ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_6.htm#mdiv47

1.5.140 The child must be released if no longer at risk of significant harm.

Contact

1.5.141 Where a child is in police protection or accommodated by the Local Authority contact must be allowed which is reasonable and in the child's best interests, to the following:

- Ø the child's parents;
- Ø any person who is not a parent who has parental responsibility;
- Ø any person who the child was living immediately prior to being taken into police protection;
- Ø any person in whose favour a contact order is made;
- Ø any person who is allowed contact under **Section 34**⁷² of the Act.

1.5.142 Contact with a child is determined by the designated Officer when in Police Protection outside of the Local Authority providing the accommodation. Once the child is accommodated (and the Police Protection still applies) this responsibility transfers to the Local Authority.

Duration

1.5.143 Following the exercise of police Protection the Local Authority should consider a need for a court order as soon as reasonably possible.

Parental responsibility

1.5.144 **Police protection does not affect parental responsibility but the designated officer shall take reasonable action, in all circumstances, that ensures the protection of the child, having regard to the length of time that the child requires this level of protection.**

Ending the Police Protection

1.5.145 The designated officer may release a child from police protection after completing the required enquiries, unless this would place the child at risk of significant harm.

Recovery Order (s50⁷³)

1.5.146 Under **section 49**⁷⁴ of the Children Act 1989, it is an offence for a person knowingly and without lawful authority or reasonable excuse to take or keep a child away from the responsible person or to induce, assist or incite a child to run or stay away from the responsible person.

1.5.147 This applies to a child who is:

- Ø in care (a child provided with accommodation under **s20**⁷⁵ is not in care);

⁷² http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_5.htm#mdiv34

⁷³ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_6.htm#mdiv50

⁷⁴ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_6.htm#mdiv49

⁷⁵ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_4.htm#mdiv20

∅ subject to an Emergency Protection Order;

∅ in Police Protection.

1.5.148 The responsible person is the person who has care of the child under the Court Order, Emergency Protection Order or Police Powers of Protection.

Grounds

1.5.149 A Recovery Order can be made if a child:

∅ has been unlawfully taken or kept away from the responsible person;

∅ has run away or is staying away from the responsible person; *or*

∅ is missing.

Powers and Duties under the Order

1.5.150 A Recovery Order:

∅ directs any person who is able to, to produce the child on request;

∅ authorises the removal of the child;

∅ requires any person with information regarding the child's whereabouts to disclose such information, if asked, to the Police or a Court;

∅ authorises the Police to search specified premises for the child.

1.5.151 The application may be made by the person with parental responsibility under the Care Order or Emergency Protection Order or the designated officer under s46⁷⁶.

1.5.152 Any person authorised under the Recovery Order must produce some duly authenticated document showing he is authorised if so asked.

1.5.153 It is an offence to intentionally obstruct the removal of the child.

1.5.154 The Order also has effect in Scotland.

Exclusion Requirements (s38a⁷⁷ and s44a⁷⁸ Children Act 1989)

1.5.155 This can be used to exclude an alleged abuser from the home and surrounding areas if this prevents a child from being looked after. It can only be made as part of an interim Care Order or an emergency protection order.

1.5.156 The Court must be satisfied that there is reasonable cause to believe that, if the person is excluded from the child's home, then:

⁷⁶ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_6.htm#mdiv46

⁷⁷ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_5.htm#mdiv38

⁷⁸ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_6.htm#mdiv44

- Ø the child will not be likely to suffer significant harm or (on an Emergency Protection Order application) enquiries by the Children and Young people’s Directorate will no longer be frustrated;
- Ø another person living in the home is able and willing to give the child the care that it would be reasonable to expect a parent to give and consents to the inclusion of the exclusion requirement.

- 1.5.157 The requirement may require the person to leave the home, prohibit him from returning or exclude him from a defined area around the home.
- 1.5.158 A power of arrest can be attached. The court can accept an undertaking from a person instead of an exclusion order, but this will not have a power of arrest.
- 1.5.159 If the Local Authority removes the child from the home that it applies to for a continuous period of more than 24 hours, the exclusion requirement ceases to be effective.
- 1.5.160 The requirement ceases when the Interim Care Order or Emergency Protection Order ends. Whilst it can be sought again if a further Interim Care Order is made, it cannot be made as part of a final Care Order.
- 1.5.161 In certain circumstances, the Local Authority could invite the Court to use its powers to make a non-molestation order when dealing with an application for a Care or Supervision Order. This could achieve the objective of preventing a person from approaching the child and, unlike an exclusion requirement, could be made at the final hearing.

Contact ([Section 34](#)⁷⁹, Children Act 1989)

- 1.5.162 When a child is the subject of a Care Order (including an Interim Care Order), the Court may also make an order defining the contact to be allowed between the child and the person named in the order.
- 1.5.163 If no order is made in respect of contact, the Local Authority is under a duty to promote reasonable contact between the child in care and his parents (including the father without parental responsibility) and anyone who had care of the child by virtue of a court order immediately before the Care Order was made.
- 1.5.164 It may, in some circumstances, be necessary to prevent such contact in order to protect the child. This may be because of the risk of the child suffering actual harm at contact or because of the need to terminate contact in order to progress a plan for permanence.
- 1.5.165 The Local Authority may refuse to allow contact where they are satisfied that it is necessary to do so in order to promote and safeguard the child’s welfare. However, the refusal can only last for up to seven days.
- 1.5.166 This power is only to be used in urgent situations. In order to refuse contact for a longer period, the Local Authority would need to obtain an order under [section 34\(4\)](#) permitting it to refuse contact between the child and the parent/former carer.

⁷⁹ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_5.htm#mdiv34
Durham LSCB Child Protection Procedures
Appendix 1 – Legal Framework

1.5.167 An order under **section 34**⁸⁰ (4) is permissive. It does not prevent the Local Authority from allowing further contact if it considers that it would be consistent with the welfare of the child.

1.5.168 If the court does not make a specific Contact Order then **Section 34** provides the Local Authority must allow the child reasonable contact with:

- Ø his/her parents or guardian;
- Ø the person whose favour any Residence Order was made where there is one in force immediately before the Care Order is made.

1.5.169 If the court does make a specific Contact Order that order will take precedence over statutory reasonable contact.

Who can apply for a specific Contact Order?

1.5.170 The following people may apply for a specific Contact Order under **Section 34** of the Children Act 1989:

- Ø The Local Authority;
- Ø The child;
- Ø Any other person who has the court's permission to apply;
- Ø In the absence of an application the court may make a Contact Order on its own initiative.

1.5.171 An order may also restrict contact between the child and a named person and may even provide for there to be no contact with that person.

Refusal to allow Contact

1.5.172 The Local Authority may refuse to allow the reasonable contact with the child or contact that is required by a Contact Order in the following circumstances where:

1. the Local Authority is satisfied that it is necessary to refuse contact to safeguard or promote the child's welfare; *and*
2. the refusal is decided upon as a matter of urgency and does not last for more than seven days;
3. additionally the Local Authority or the child may apply to the court for an order authorising the Local Authority to refuse to allow contact between the child and any person.

⁸⁰ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_5.htm#mdiv34

1.6 Police & Criminal Evidence Act 1984 Section 17(1)(E)

- 1.6.1 This section enables a Police Constable to enter premises without a warrant in order save life or limb. It is the general power of the police and is not confined to child protection matters.

1.7 Family Law Act 1996⁸¹ Part IV

- 1.7.1 Part IV of the Family Law Act 1996 came into operation in October 1997 and represents a comprehensive change in the civil law regarding domestic abuse.

Non-Molestation Orders (Section 42⁸² Family Law Act 1996)

- 1.7.2 Non-Molestation Orders are defined as containing either or both of the following:

- Ø Provisions prohibiting the respondent from molesting another person who is associated with the respondent, such as spouse, partner or former partner;
- Ø Provisions prohibiting the respondent from molesting a relevant child.

- 1.7.3 The court may make an order under the section in any family proceedings if it considers it will be of benefit, including benefit to any relevant child. This provision may also be used in proceedings where an EPO has been made under Section 44⁸³ of the Children Act which includes an exclusion requirement.

Ex-Parte Applications (Section 45⁸⁴ Family Law Act 1996)

- 1.7.4 This section allows for a court to make an initial occupation order or an initial occupation non-molestation order on an ex-parte basis. The court must have regard to all the circumstances, including any risk of significant harm to the applicant or a relevant child if the initial order is not made immediately. An Initial Ex-Parte Order must be followed by an opportunity for the respondent to make representation at a full hearing where a court may make a full order.

Power of Arrest (Section 47⁸⁵ Family Law Act 1996)

- 1.7.5 This section contains a Power of Arrest which must be attached to an occupation order or a Non-Molestation Order if it appears to a court that the respondent has used or threatened violence against the applicant or relevant child. The court should make an order unless it is satisfied that the applicant of the child will be reasonably protected without such a Power of Arrest. In certain circumstances the court may attach Powers of Arrest to Ex-Parte Orders.

⁸¹ <http://www.opsi.gov.uk/acts/acts1996/1996027.htm>

⁸² <http://www.opsi.gov.uk/acts/acts1996/f1996027.htm#42>.

⁸³ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_6.htm#mdiv44

⁸⁴ <http://www.opsi.gov.uk/acts/acts1996/f1996027.htm#45>.

⁸⁵ <http://www.opsi.gov.uk/acts/acts1996/f1996027.htm#47>.

1.8 Placements outside England & Wales

Children in Care

- 1.8.1 The leave of the Court is required to place a child who is the subject of a Care Order (including an Interim Care Order) outside England & Wales. This will not apply, though, if the child has been freed for adoption or is the subject of a Placement Order.
- 1.8.2 The Court shall not give its approval unless it is satisfied that:
- ∅ living outside England and Wales would be in the child's best interests;
 - ∅ suitable arrangements have been, or will be, made for his reception and welfare in the country in which he will live;
 - ∅ the child (if of sufficient understanding) has consented to living in that country; *and*
 - ∅ every person with parental responsibility has consented **unless** the Court is satisfied that any such person is withholding their consent unreasonably, cannot be found or is incapable of consenting.
- 1.8.3 These requirements would apply, for example, to a proposed adoptive placement in Scotland or Northern Ireland where the Local Authority was looking to move the child before the final hearing in the adoption or Freeing Proceedings.

Looked After Children

- 1.8.4 If the Local Authority is looking after a child, but the child is not the subject of a full or interim Care Order, it may place the child outside England & Wales with the consent of every person with parental responsibility for the child.
- 1.8.5 If consent is not forthcoming, the Local Authority would need to consider starting care proceedings if it believed that the placement outside England & Wales was necessary for the child's welfare.

Adoption

- 1.8.6 In appropriate cases, adoption will need to be considered as part of a **Child Protection Plan**⁸⁶ where there is clear evidence that the parents and the birth family cannot meet the needs of the child and the child needs a permanent substitute placement.
- 1.8.7 The **Adoption and Children Act 2002**⁸⁷ was brought fully into force on 30 December 2005 and applies to the placement of children for adoption from that date. Applications to free a child for adoption or to adopt a child that were ongoing at that time were dealt with under the Adoption Act 1976.
- 1.8.8 Where the plan is adoption, the child can only be placed for adoption if each parent with

⁸⁶ Add hyperlink to 5.5 of Section 5 of these procedures

⁸⁷ <http://www.opsi.gov.uk/acts/acts2002/20020038.htm>

parental responsibility consents or the Court makes a Placement Order.

- 1.8.9 The birth mother cannot give consent to the making of an Adoption Order until six weeks after the child's birth but can consent to the child being placed with adopters in the interim. The consent of a birth parent to adoption must be given to a CAFCASS officer in accordance with Court rules. The consent may be withdrawn at any time until an application for an Adoption Order is made.
- 1.8.10 Where a parent does not consent, the court may dispense with their consent where there is an application for a Placement Order or an Adoption Order on the grounds:
- Ø that the parent cannot be found or is incapable of giving consent; or
 - Ø the welfare of the child requires the consent to be dispensed with.
- 1.8.11 The Placement Order authorises the Local Authority to place the child for adoption. An Order must be sought where there are ongoing care proceedings and, following a recommendation by the area Adoption Panel, the Local Authority is satisfied that the child should be placed for adoption. A Placement Order may be sought in other circumstances, including where the birth parent has consented but there is concern that the consent may be withdrawn.
- 1.8.12 Whenever a court or a Local Authority as adoption agency is coming to a decision about adoption, its paramount consideration must be the welfare of the child throughout his life. They must also bear in mind that delay is likely to be prejudicial to the child's welfare. **Section 1**⁸⁸ of the Adoption and Children Act 2002 lists a number of factors that the court or agency must consider. This is similar to the welfare checklist under the **Children Act 1989**⁸⁹ but reflects the fact that adoption is a life-long decision.
- 1.8.13 The effect of a Placement Order is that any Care Order is suspended. The Local Authority shares parental responsibility with those birth parents who have parental responsibility. Once the child is placed for adoption, the prospective adopters also share parental responsibility. The Local Authority may restrict the extent to which the birth parents and the prospective adopters can exercise their parental responsibility.
- 1.8.14 Any Supervision Order or order made under **section 8**⁹⁰ of the Children Act 1989 ceases

⁸⁸ <http://www.opsi.gov.uk/acts/acts2002/20038--b.htm#1>

⁸⁹ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_1.htm

⁹⁰ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_3.htm#mdiv8

to have effect once a Placement Order is made.

1.8.15 An Adoption Order may be sought by a single person or a couple, including same sex or unmarried couples. An application cannot be made until the child has been living with the prospective adopters for at least 10 weeks.

1.8.16 An Adoption Order cannot be made in respect of a person who is or has been married. An application cannot be made in respect of a person who is 18 years old and an order cannot be made in respect of a person who is 19 years old or older.

1.9 Sexual Offences Act 2003⁹¹

- 1.9.1 The Act provides a comprehensive new legislative framework for sexual offences. It covers offences against adults (including people with mental disorders), offences against children, and familial sexual offences. It also makes amendments to the laws governing the Sex Offenders Register.
- 1.9.2 **Sections 16 to 24**⁹² of the Act extend existing laws relating to abuse of a position of trust by people who work with children.
- 1.9.3 **Sections 38 to 44**⁹³ contain new offences for people who are engaged in providing care, assistance or services to someone in connection with a mental disorder.

Children & Young People: abuse of position of trust

- 1.9.4 The Sexual Offences Act re-enacts and extends the abuse of position of trust offences set out in the Sexual Offences (Amendment) Act 2000.

Protecting 16 and 17 year olds

- 1.9.5 The position of trust offences in the new Act cover all children under 18. They are mainly designed to protect young people aged 16 and 17 who, even though they are over the age of consent, are potentially vulnerable to sexual abuse from people in positions of trust or authority.
- 1.9.6 Where young people are 12 or under, between 13 and 15, offences against them are likely to be charged under the general laws in the Act for these age groups.

What are 'positions of trust'?

- 1.9.7 The Act sets down specific positions of trust to which offences relate. People who are in these positions of trust will normally have power and authority in a child's life, and may have a key influence of their future. They will have regular contact with the child, and may be acting in loco parentis.

The abuse of trust offences

- 1.9.8 The offences for those working in positions of trust cover the same kinds of behaviour as offences which apply to the general public – except that, where positions of trust are concerned, the offences apply where the young person is under 18, instead of under 16.

Sexual activity with a child

- 1.9.9 This law covers all intercourse, other penetration or sexual touching of a child or young person. It includes sexual touching of any part of their body, clothed or unclothed, either with your body or with an object.

⁹¹ <http://www.opsi.gov.uk/ACTS/acts2003/20030042.htm>

⁹² <http://www.opsi.gov.uk/ACTS/acts2003/30042--b.htm#16>

⁹³ <http://www.opsi.gov.uk/ACTS/acts2003/30042--b.htm#38>

Causing or inciting a child to engage in sexual activity

- 1.9.10 This covers causing or persuading a child or young person to engage in any sexual activity, including sexual acts with someone else, or making a child strip or masturbate. This offence applies where someone has incited a child to engage in sex, even if the intended sexual activity does not take place.

Engaging in sexual activity in the presence of a child

- 1.9.11 Under this law, it is an offence to intentionally engage in sexual activity when you know that you can be seen by a child, or you believe or intend that they can see you, and where you do this in order to get sexual gratification from the fact that they may be watching you.

Causing a child to watch a sexual act

- 1.9.12 This makes it an offence to intentionally cause a child to watch someone else taking part in sexual activity – including looking at images such as videos, photos, or webcams – for the purpose of your own sexual gratification.

Positions of trust: exceptions

- 1.9.13 There are certain situations in which the position of trust offences do not apply. These are where a person is legally married to the young person, or where a lawful sexual relationship existed before the position of trust arose. This would apply, for instance, where a 17 year old girl goes to stay in a hospital where her adult boyfriend works as a nurse.

Child sex offences: exceptions

- 1.9.14 Specific amendments were made to the Act to ensure that people such as teachers, health professionals, social care professionals, sexual health counsellors, youth workers, teenage magazine writers, ‘agony aunts’ and parents are not liable to prosecution when they are acting to protect a child or young person, including those with a mental disorder.
- 1.9.15 The amendments apply to the offence of ‘arranging or facilitating the commission of a child sex offence’ and to aiding, abetting or counselling the commission of certain other child sex offences.
- 1.9.16 The exception covers people who are: protecting a child from sexually transmitted infection, protecting the physical safety of a child, preventing a child from becoming pregnant, or promoting the child’s emotional wellbeing by the giving of advice.
- 1.9.17 This means that, for instance, a health professional who provides contraception to an under 16 year old, a teacher who promotes contraception as part of sex education, or a Connexions Personal Adviser who accompanies a young person to a sexual health clinic, would be exempted from these offences, providing they are acting to protect the child.

1.9.18 These exceptions do not apply if someone acts to cause or encourage a sexual offence, or a child's participation in it, or for their own sexual gratification. This might include, for instance, someone explaining sexual intercourse to a child in order to assist their friend to engage in sexual activity with them.

1.10 Sex Offender Orders – Crime & Disorder Act 1998⁹⁴

- 1.10.1 This Act came into force on 1 December 1998 and refers to convicted sex offenders who have committed offences either in the UK or abroad. A sex offender must have acted in such a way as to give reasonable cause to believe that an order is necessary to protect the public from serious harm (death or serious personal injury whether physical or psychological, caused by such further offences committed by him/her). The police are the only body with authority to apply to a Magistrate Court for orders setting out prohibition which are designed to protect the public from serious harm.

⁹⁴ <http://www.opsi.gov.uk/acts/acts1998/98037--b.htm#2>

1.11 The Adoption And Children Act 2002⁹⁵

- 1.11.1 The Adoption and Children Act 2002 received Royal Assent and therefore became law on 7 November 2002. However, the Act is to be implemented over the course of two years and should be fully implemented by 2004.
- 1.11.2 The first stage of the Act dealing with Local Authorities duties to provide an adoption service and support services was implemented in April 2003. The second stage relating to inter-country adoptions came into effect on 1 June 2003 and the third stage relating to Adoption Support Services was implemented on the 31 October 2003. Changes to parental responsibility were implemented on 1 December 2003.

What are the Provisions of the Act?

- Ø To overhaul and modernise the legal framework for domestic and inter-country adoption and in particular to replace provisions of the outdated Adoption Act 1976.
- Ø To put adoption law in line with the existing provisions of the Children Act 1989 to ensure the child's welfare is the paramount consideration in all decisions relating to adoption.
- Ø To place a duty on Local Authorities to maintain an adoption service and provide adoption support services.
- Ø To provide for adoption orders to be made in favour of single people, married couples and unmarried couples.
- Ø To introduce a new independent review mechanism for prospective adopters who feel they have been turned down unfairly.
- Ø To provide a new system for access to information held in adoption agency records and by the Register General about adoptions, which take place after the Act comes into force.
- Ø To provide additional restrictions on bringing a child into the UK for adoption.
- Ø To provide restrictions on arranging adoptions and advertising children for adoption.
- Ø To cut delays in the adoption process by establishing an Adoption and Children Act Register to suggest links between children and approved adopters.
- Ø To bring in new court rules governing the making of adoption orders and measures requiring the courts to draw up timetables for adoption cases to be heard. Freeing orders are now replaced for "placement orders".
- Ø To introduce a new special guardianship order for children for whom adoption is not a suitable option but who cannot return to their birth families.
- Ø To provide that an unmarried father can acquire Parental Responsibility for his natural child where he and the child's mother register the birth of their child together.

⁹⁵ <http://www.opsi.gov.uk/acts/acts2002/20020038.htm>

- Ø To introduce arrangements for stepfathers to acquire Parental Responsibility.

What are the changes that the Act makes to the Children Act 1989?

1. A father who is registered on a child's birth certificate will acquire Parental Responsibility (this only applies to births registered on or after 1 December 2003).
2. A stepparent can acquire Parental Responsibility if both the natural parents enter into an agreement with the stepparent to give the stepparent Parental Responsibility or if the court makes an order on the stepparent applying for Parental Responsibility.
3. The restriction on foster parents making applications for Residence, Contact, Parental Responsibility Orders, etc. unless the child has been with them for three years has now been reduced to one year.
4. The meaning of "harm" for the purposes of Care and Supervision Orders has now been extended to include the child suffering impairment due to 'seeing or hearing the ill-treatment of another' (e.g. domestic violence involving the parents).
5. Residence Orders made in favour of any person who is not a parent or guardian of the child can continue in force until the child reaches 18.

1.12 Safeguarding Children in Education

- 1.12.1 The guidance is part of the Government's guidance about safeguarding and promoting the welfare of children under the provisions of the Children Act 1989.
- 1.12.2 Part 1 of the document gives guidance about the effect of the duty to have arrangements about safeguarding and promoting the welfare of children introduced by **section 175**⁹⁶ of the Education Act 2002 which came into force on 1 June 2004.
- 1.12.3 Part 2 of the guidance supplements the guidance in *Working Together to Safeguard Children* by setting out the infrastructure and arrangements that need to be in place to ensure that people in the education service have the skills, means and training necessary to ensure children and young people are protected from harm. It does not prescribe detailed procedures, but aims to specify the outcomes that organisations need to secure to enable staff to meet the objective of keeping children safe from harm, and what needs to be done or put in place to achieve this.
- 1.12.4 The guidance can be downloaded from:
www.teachernet.gov.uk/childprotection/guidance.htm⁹⁷

⁹⁶ <http://www.opsi.gov.uk/ACTS/acts2002/20032--q.htm#175>

⁹⁷ <http://www.teachernet.gov.uk/wholeschool/familyandcommunity/childprotection/guidance/>

1.13 Regulations Of Investigatory Powers Act (RIPA) 2000⁹⁸

- 1.13.1 On 25 September 2000, the Regulation of Investigatory Powers Act 2000 came into force.
- 1.13.2 It provides a statutory framework for certain bodies, including Local Authorities, to authorise officers to carry out covert surveillance operations.
- 1.13.3 It was brought about to recognise the advancement of technology in communications that had not been regulated by previous legislation.
- 1.13.4 Its aim is to provide the right balance between giving Local Authorities a framework to gather evidence for officers to do their jobs and to protect an individual's expectation of privacy.
- 1.13.5 Local Authorities are directly affected by RIPA in one of two ways:

Directed Surveillance

1.13.6 This is covert surveillance which is:

- Ø for a specific investigation or a specific operation;
- Ø in a manner likely to result in the obtaining of private information about a person, i.e. information about their private or family life;
- Ø otherwise than by way of an immediate response to events or circumstances which would not make it not reasonably practicable to seek an authorisation.

Covert use of Human Intelligence Source (CHIS)

1.13.7 This is where a person:

- Ø establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything in (b) or (c);
- Ø covertly uses a relationship to obtain information or provide access to any information about another person; *or*
- Ø covertly discloses information by the use of such a relationship, or as a result of its existence.

⁹⁸ <http://www.opsi.gov.uk/Acts/acts2000/20000023.htm>

1.14 Other Legal & Ethical Consideration

Children Left Unattended

- 1.14.1 There is no clear guidance in respect of this matter but the Children and Young Persons Act 1933 does create specific offences in respect of children.
- 1.14.2 Section 1 of the 1933 Act states it is an offence for any person who has attained the age of 16 years and has responsibility for any child or young person under that age to wilfully assault, ill-treat, neglect, abandon, expose or cause them to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause unnecessary suffering or injury to health and any mental derangement.
- 1.14.3 A person can be convicted of an offence of leaving their child under the age of 16 alone if this places them at risk as outlined in Section 1 of the 1993 Act. However, the difficulty arises in respect of at what age a child can be left alone or be allowed to baby-sit. The older the child then the less likely it is that an offence under Section 1 would occur. The understanding and maturity of the child would have to be considered.
- 1.14.4 Section 11 of the 1933 Act creates a specific offence of allowing a child under the age of 12 to be in a room containing an open fire grate or other heating appliances likely to injure the child upon contact without taking reasonable precautions, as a result of which the child is seriously injured or killed.

Age of Consent

- 1.14.5 Young people under the age of 13 are deemed unable to give consent to sexual activity.
- 1.14.6 The **Sexual Offences Act 2003**⁹⁹ abolished the presumption of criminal law that a boy under the age of 14 is incapable of sexual intercourse.

Criminal Liability

- 1.14.7 Section 50 of the Children and Young Persons Act 1933 states that it shall be conclusively presumed that no child under the age of 10 years can be guilty of any offence and therefore no criminal proceedings can be instituted against such a child.
- 1.14.8 For the purposes of the criminal law, persons under the age of 18, male and female, are generally referred to as youths. However, the Children and Young Persons Act 1933 – 1969 define a “child” as someone under 14 years and a “young person” as someone aged between 14 and 18 years. In addition, a youth who has attained the age of 17 years is treated for pre-trial proceedings in the same way as an adult.
- 1.14.9 Where criminal proceedings are brought against a child (a person aged between 10 and under 14 years) he is presumed not to know right from wrong but this presumption may be rebutted by the prosecution. The older the child the less strong the presumption until it disappears altogether at his 14th birthday.

⁹⁹ <http://www.opsi.gov.uk/ACTS/acts2003/20030042.htm>

Interviewing a Youth

1.14.10 The procedural requirements for questioning an accused are contained in the Code of Practice under the Police and Criminal Evidence Act 1984. These include requirements for the presence of an ‘appropriate person’ at interviews of the youth by the Police and particularly that youths should only be interviewed at their place of education in exceptional circumstances and then only with the agreement of the Principal/Headteacher.

Criminal Proceedings

1.14.11 The decision whether or not criminal proceedings should be initiated will be based on three main factors:

- i whether or not there is sufficient substantial evidence to prosecute;
- ii whether it is in the public interest that proceedings should be instigated against a particular offender;
- iii whether or not it is in the interests of the child victim.

1.14.12 Although the Police may instigate proceedings, it is the responsibility of the Crown Prosecution Service to review and, where appropriate, conduct all criminal proceedings instigated on behalf of the Police. Statutory charging now dictates that the Crown Prosecution Service advice will be sought in all cases prior to a criminal charge being brought.

1.14.13 The evidential requirement of the criminal courts is proof beyond reasonable doubt that the defendant committed the offence of which they stand indicted. The burden of proof rests with the prosecution i.e. the defendant does not have to prove his innocence.

1.14.14 Proceedings for the protection of children under the Children Act 1989 take place in the civil courts which work to a lesser standard of proof, that of the balance of probabilities. It is not unusual for the Police or Crown Prosecution Service to decide that criminal proceedings cannot be instigated against a person suspected of child abuse on the grounds that there is insufficient evidence to meet the higher standard of proof and for the civil courts to decide that the child needs protection from the same individual. The criminal courts focus on the behaviour of the defendant, the civil courts on the interests of the child.

Criminal Injuries Compensation

- 1.14.15 If it appears that a child may be eligible to apply for Criminal Injuries Compensation, this should always be drawn to the attention of the person with parental responsibility, by agencies involved in child protection.
- 1.14.16 An application for Criminal Injuries Compensation should be made normally by the victim, but in the case of the child, by a person with parental responsibility, on his/her behalf. Where a child is in care, this should be made by the child's social worker in consultation with his/her Tier 4 Manager.
- 1.14.17 The award is made to try and minimise the trauma and acknowledge the child's right as a victim. To qualify, an applicant must have sustained personal injury, which includes physical injury, and/or mental injury and is directly attributable to a crime of violence. This can include sexual abuse, indecency and interference. A claim should also be considered where trauma has been suffered as a result of being a witness to a violent crime.
- 1.14.18 In the cases of child abuse within the family, where there has been no prosecution, the applicant must be able to satisfy the Criminal Injuries Compensation Board (CICB) that on the balance of probabilities, the alleged events actually occurred and that the offender will not benefit from an award. The CICB has a time limit of two years in which to apply after an event, although is able to waive this in cases of child abuse. Consideration should therefore be given to applications for child abuse even after the two-year limit is passed.

1.15 Guidance on Offences Against Children

- 1.15.1 List of offences (chronological) from the “**Guidance on offences against children**”¹⁰⁰, Home Office Circular 16/2005 which identifies the offences which indicates that the offender is a risk to children. The Circular stresses that the list carries with it no statutory requirements. It is a list of the major offences that might be committed against children. Schedule One to the Children and Young Persons Act has not actually been repealed or amended.
- 1.15.2 When using the list attached practitioners need to exercise their professional judgement in all instances. It should be remembered that:
- i) this is not an exhaustive list. There are also other types of offences where a child may be the intended victim but where the primary offence is not a child specific offence (e.g. telecommunications offences, harassment etc.).
 - ii) new offences may be created by new legislation.
 - iii) some offences may only indicate a risk to children in certain circumstances.
 - iv) not all convicted or cautioned individuals will necessarily pose a continued risk to children.
 - v) there will also be cases where a person without a conviction or caution may pose a risk to children.

Offence	Section	Act
Murder	Common Law	
Manslaughter	Common Law	
Infanticide	Common Law	
Kidnapping	Common Law	
False Imprisonment	Common Law	
Assault or battery	Common Law	
Indecent exposure	Section 4	Vagrancy Act 1824
Indecent exposure	Section 28	Town Police Clauses Act 1847
Conspiring or soliciting to commit murder	Section 4	Offences Against the Person Act 1861
Administering poison, or wounding, with intent to murder	Section 11	Offences Against the Person Act 1861
Threats to kill	Section 16	Offences Against the Person Act 1861
Wounding and causing grievous bodily harm: Wounding with intent	Section 18	Offences Against the Person Act 1861
Wounding and causing grievous bodily harm: Inflicting bodily injury	Section 20	Offences Against the Person Act 1861

¹⁰⁰ <http://www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/1b6d4af0fe8c4d4780256fcc00414639?OpenDocument>
 Durham LSCB Child Protection Procedures
 Appendix 1 – Legal Framework

Offence	Section	Act
Maliciously administering poison	Section 23	Offences Against the Person Act 1861
Abandonment of children under two	Section 27	Offences Against the Person Act 1861
Assault occasioning actual bodily harm	Section 47	Offences Against the Person Act 1861
Child stealing	Section 56	Offences Against the Person Act 1861
Drunk in charge of a child under 7 years	Section 2	Licensing Act 1902
Cruelty to children	Section 1	Children and Young Persons Act 1933
Allowing persons under 16 to be in brothels	Section 3	Children and Young Persons Act 1933
Causing or allowing persons under 16 to be used for begging	Section 4	Children and Young Persons Act 1933
Give / cause to be given intoxicating liquor to a child under 5 years	Section 5	Children and Young Persons Act 1933
Exposing children under seven to risk of burning	Section 11	Children and Young Persons Act 1933
Prohibition against persons under 16 taking part in performances endangering life and limb	Section 23	Children and Young Persons Act 1933
Infanticide	Section 1	Infanticide Act 1938
Rape	Section 1	Sexual Offences Act 1956
Procurement of a woman by threats	Section 2	Sexual Offences Act 1956
Procurement of a woman by false pretences	Section 3	Sexual Offences Act 1956
Administering drugs to obtain or facilitate intercourse	Section 4	Sexual Offences Act 1956
Intercourse with a girl under 13	Section 5	Sexual Offences Act 1956
Intercourse with a girl under 16	Section 6	Sexual Offences Act 1956
Intercourse with defective	Section 7	Sexual Offences Act 1956
Procurement of defective	Section 9	Sexual Offences Act 1956
Incest by a man	Section 10	Sexual Offences Act 1956
Incest by a woman	Section 11	Sexual Offences Act 1956
Buggery where the victim is under 16	Section 12	Sexual Offences Act 1956
Indecency between men (gross indecency)	Section 13	Sexual Offences Act 1956
Indecent assault on a woman	Section 14	Sexual Offences Act 1956
Indecent assault on a man	Section 15	Sexual Offences Act 1956
Assault with intent to commit buggery	Section 16	Sexual Offences Act 1956
Abduction of a woman by force or for the sake of her property	Section 17	Sexual Offences Act 1956
Abduction of unmarried girl under 18 from parent or guardian	Section 19	Sexual Offences Act 1956

Offence	Section	Act
Abduction of unmarried girl under 16 from parent or guardian	Section 20	Sexual Offences Act 1956
Abduction of defective from parent or guardian	Section 21	Sexual Offences Act 1956
Causing prostitution of women	Section 22	Sexual Offences Act 1956
Procurement of girl under 21	Section 23	Sexual Offences Act 1956
Detention of a woman in a brothel or other premises	Section 24	Sexual Offences Act 1956
Permitting a girl under 13 to use premises for intercourse	Section 25	Sexual Offences Act 1956
Permitting a girl between 13 and 16 to use premises for intercourse	Section 26	Sexual Offences Act 1956
Permitting defective to use premises for intercourse	Section 27	Sexual Offences Act 1956
Causing or encouraging prostitution of, or intercourse with, or indecent assault on, girl under 16	Section 28	Sexual Offences Act 1956
Causing or encouraging prostitution of defective	Section 29	Sexual Offences Act 1956
Man living on earnings of prostitution	Section 30	Sexual Offences Act 1956
Women exercising control over prostitute	Section 31	Sexual Offences Act 1956
Sexual intercourse with patients	Section 128	Mental Health Act 1959
Indecent conduct towards young child	Section 1	Indecency with Children Act 1960
Aiding, abetting, counselling or procuring the suicide of a child or young person.	Section 2	Suicide Act 1961
Procuring others to commit homosexual acts (by procuring a child to commit an act of buggery with any person, or procuring any person to commit an act of buggery with a child)	Section 4	Sexual Offences Act 1967
Living on earnings of male prostitution	Section 5	Sexual Offences Act 1967
Burglary (by entering a building or part of a building with intent to rape a child)	Section 9	Theft Act 1968
Supplying or offering to supply a Class A drug to a child, being concerned in the supplying of such a drug to a child, or being concerned in the making to a child of an offer to supply such a drug.	Section 4	Misuse of Drugs Act 1971
Inciting girl under 16 to have incestuous sexual intercourse	Section 54	Criminal Law Act 1977
Indecent photographs of children	Section 1	Protection of Children Act 1978
Offence of abduction of a child by parent	Section 1	Child Abduction Act 1984

Offence	Section	Act
Offence of abduction of child by other persons	Section 2	Child Abduction Act 1984
Possession of indecent photographs of children	Section 160	Criminal Justice Act 1988
Abduction of Child in Care/ Police Protection/take away/induce away/assist to run away/ keep away	Section 49	Children Act 1989
Recovery of missing or unlawfully held children	Section 50	Children Act 1989
Abuse of Trust	Section 3	Sexual Offences (Amendment) Act 2000
Traffic in prostitution	Section 145	Nationality, Immigration and Asylum Act 2002
Rape	Section 1	Sexual Offences Act 2003
Assault by penetration	Section 2	Sexual Offences Act 2003
Sexual assault	Section 3	Sexual Offences Act 2003
Causing a person to engage in sexual activity without consent.	Section 4	Sexual Offences Act 2003
Rape of a child under 13	Section 5	Sexual Offences Act 2003
Assault of a child under 13 by penetration	Section 6	Sexual Offences Act 2003
Sexual assault of a child under 13	Section 7	Sexual Offences Act 2003
Causing or inciting a child under 13 to engage in sexual activity	Section 8	Sexual Offences Act 2003
Sexual Activity with a Child	Section 9	Sexual Offences Act 2003
Causing or inciting a child to engage in sexual activity	Section 10	Sexual Offences Act 2003
Engaging in sexual activity in the presence of a child	Section 11	Sexual Offences Act 2003
Causing a child to watch a sexual act	Section 12	Sexual Offences Act 2003
Child sex offences committed by a children or young persons	Section 13	Sexual Offences Act 2003
Arranging or facilitating commission of a child sex offence	Section 14	Sexual Offences Act 2003
Meeting a child following sexual grooming etc.	Section 15	Sexual Offences Act 2003
Abuse of position of trust: sexual activity with a child	Section 16	Sexual Offences Act 2003
Abuse of position of trust: causing or inciting a child to engage in sexual activity	Section 17	Sexual Offences Act 2003
Abuse of position of trust: sexual activity in the presence of a child	Section 18	Sexual Offences Act 2003
Abuse of position of trust: causing a child to watch a sexual act	Section 19	Sexual Offences Act 2003
Sexual activity with a child family member	Section 25	Sexual Offences Act 2003
Inciting a child family member to engage in sexual activity	Section 26	Sexual Offences Act 2003

Offence	Section	Act
Sexual activity with a person with a mental disorder impeding choice	Section 30	Sexual Offences Act 2003
Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity	Section 31	Sexual Offences Act 2003
Engaging in sexual activity in the presence of a person with a mental disorder impeding choice	Section 32	Sexual Offences Act 2003
Causing a person, with a mental disorder impeding choice, to watch a sexual act	Section 33	Sexual Offences Act 2003
Inducement, threat or deception to procure sexual activity with a person with a mental disorder	Section 34	Sexual Offences Act 2003
Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception	Section 35	Sexual Offences Act 2003
Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder	Section 36	Sexual Offences Act 2003
Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception	Section 37	Sexual Offences Act 2003
Care workers: sexual activity with a person with a mental disorder	Section 38	Sexual Offences Act 2003
Care workers: causing or inciting sexual activity	Section 39	Sexual Offences Act 2003
Care workers: sexual activity in the presence of a person with a mental disorder	Section 40	Sexual Offences Act 2003
Care workers: causing a person with a mental disorder to watch a sexual act	Section 41	Sexual Offences Act 2003
Paying for the sexual services of a child	Section 47	Sexual Offences Act 2003
Causing or inciting child prostitution or pornography	Section 48	Sexual Offences Act 2003
Controlling a child prostitute or a child involved in pornography	Section 49	Sexual Offences Act 2003
Arranging or facilitating child prostitution or pornography	Section 50	Sexual Offences Act 2003
Causing or inciting prostitution for gain	Section 52	Sexual Offences Act 2003
Controlling prostitution for gain	Section 53	Sexual Offences Act 2003
Trafficking into the UK for sexual exploitation	Section 57	Sexual Offences Act 2003

Offence	Section	Act
Trafficking within the UK for sexual exploitation	Section 58	Sexual Offences Act 2003
Trafficking out of the UK for sexual exploitation	Section 59	Sexual Offences Act 2003
Administering a substance with intent	Section 61	Sexual Offences Act 2003
Committing an offence with intent to commit a sexual offence (in a case where the intended offence was an offence against a child)	Section 62	Sexual Offences Act 2003
Trespass with intent to commit a sexual offence (in a case where the intended offence was an offence against a child)	Section 63	Sexual Offences Act 2003
Exposure	Section 66	Sexual Offences Act 2003
Voyeurism	Section 67	Sexual Offences Act 2003
Trafficking people for exploitation	Section 4	Asylum and Immigration (Treatment of Claimants, etc)

1.15.3 A reference to an offence in this list includes a reference to an attempt, conspiracy or incitement to commit that offence, and a reference to aiding, abetting, counselling or procuring the commission of that offence.

1.15.4 Unless stated otherwise, the victim of the offences listed above will be under 18.

1.16 Disqualification from Working with Children

Disqualification Orders

- 1.16.1 The **Criminal Justice and Court Services Act 2000**¹⁰¹ (CJCSA), as amended by the **Criminal Justice Act 2003**¹⁰², provides for people to be disqualified from working with children. A person is disqualified by either:
- Ø a Disqualification Order, made by the Crown Court when a person is convicted for an offence against a child (under 18) listed in Schedule 4 to the CJCSA. Schedule 4 includes sexual offences, violent offences and offences of selling Class A drugs to a child; *or*
 - Ø being included in a permanent capacity on the list of people who are unsuitable to work with children that is kept under s1 of the **Protection of Children Act 1999**¹⁰³ (see paragraph 11.29 below); *or*,
 - Ø being included on **DfES List 99**¹⁰⁴ on the ground of being unsuitable to work with children (see below).
- 1.16.2 Further information on Disqualification Orders is outlined in **Working Together to Safeguard Children 2006**¹⁰⁵ paras 12.24 – 12.28.

The Protection of Children Act List

- 1.16.3 This Act gives the Secretary of State power to keep a list of people who are unsuitable to work with children in childcare positions. Childcare organisations in the regulated sector are required to make a report to the Secretary of State in specified circumstances, principally if they dismiss a person for misconduct which has harmed a child or put a child at risk of harm, or if a person resigns in circumstances where s/he might have been dismissed for that reason. Other organisations that employ childcare workers can also make reports in those circumstances, but do not have to.
- 1.16.4 If there appear to be grounds for including the person on the List his/her name will be added provisionally while further enquiries are made, and the person will be given the opportunity to make written observations about the case. If, at the end of that process the Secretary of State is of the opinion that:
- Ø the referring organisation reasonably believed that the person was guilty of misconduct that harmed a child, or put a child at risk of harm; *and*
 - Ø the person is unsuitable to work with children,

¹⁰¹ <http://www.opsi.gov.uk/acts/acts2000/20000043.htm>

¹⁰² <http://www.opsi.gov.uk/acts/acts2003/20030044.htm>

¹⁰³ <http://www.opsi.gov.uk/acts/acts1999/19990014.htm>

¹⁰⁴ http://www.dfes.gov.uk/publications/guidanceonthelaw/11_95/list99.htm

¹⁰⁵ <http://www.everychildmatters.gov.uk/files/AE53C8F9D7AEB1B23E403514A6C1B17D.pdf>

- 1.16.5 the person will be added to the List on a permanent basis.
- 1.16.6 Further information on Disqualification Orders is outlined in **Working Together to Safeguard Children 2006**¹⁰⁶ paras 12.29 – 12.32

¹⁰⁶ <http://www.everychildmatters.gov.uk/files/AE53C8F9D7AEB1B23E403514A6C1B17D.pdf>
Durham LSCB Child Protection Procedures
Appendix 1 – Legal Framework

[DFES List 99¹⁰⁷](#)

- 1.16.7 List 99 is a confidential list of people who the Secretary of State has directed may not be employed by Local Education Authorities (LEAs), schools (including independent schools) or Further Education (FE) institutions as a teacher or in work involving regular contact with children under 18 years of age. The List also includes details of people the Secretary of State has directed can only be employed subject to specific conditions. Employers in the education sector are under a duty not to use a person who is subject to a direction in contravention of that direction.
- 1.16.8 Further information on Disqualification Orders is outlined in [Working Together to Safeguard Children 2006¹⁰⁸](#) paras 12.33 – 12.37.

[Criminal Records Bureau¹⁰⁹ \(CRB\)](#)

- 1.16.9 The Criminal Records Bureau (CRB) is an executive agency of the Home Office. The CRB's Disclosure service aims to help employers make safer recruitment decisions by identifying candidates who may be unsuitable for certain types of work. Employers should ask successful candidates to apply to the CRB for a Standard or Enhanced Disclosure, depending on the duties of the particular position or job involved. In addition to information about a person's criminal record, Disclosures supplied in connection with work with children will contain details of whether a person is included on List 99, the Protection of Children Act List, or is disqualified by the courts from all work with children. Enhanced Disclosures may contain details of acquittals or other non-conviction information held on local Police records, relevant to the position or post for which the person has been selected and the Police may also provide additional information to employers in a separate letter. Further information, including details of how to apply for Disclosures, is available at <http://www.crb.gov.uk>.

[The Sex Offender Register](#)

- 1.16.10 The notification requirements of Part 2 of the [Sexual Offences Act 2003¹¹⁰](#) (known as the Sex Offenders Register) are an automatic requirement on offenders who receive a conviction or caution for certain sexual offences. The notification requirements are intended to ensure that the notification requirements do not bar offenders from certain types of employment, from being alone with children etc.
- 1.16.11 Further information on Disqualification Orders is outlined in [Working Together to Safeguard Children 2006](#) paras 12.39 – 12.44.

¹⁰⁷ http://www.dfes.gov.uk/publications/guidanceonthelaw/11_95/list99.htm

¹⁰⁸ <http://www.everychildmatters.gov.uk/files/AE53C8F9D7AEB1B23E403514A6C1B17D.pdf>

¹⁰⁹ <http://www.crb.gov.uk/>

¹¹⁰ <http://www.opsi.gov.uk/ACTS/acts2003/20030042.htm>

Notification Orders

- 1.16.12 Notification Orders are intended to ensure that British citizens or residents, as well as foreign nationals, can be made subject to the notification requirements (the Sex Offenders Register) in the UK if they receive convictions or cautions for sexual offences overseas.
- 1.16.13 Notification Orders are made on application from the Police to a Magistrates' Court. Therefore, if an offender is identified who has received a conviction or caution for a sexual offence overseas the case should be referred to the local Police for action.
- 1.16.14 If a Notification Order is in force then the offender becomes subject to the requirements of Sex Offender Registration (see above).

Sexual Offences Prevention Orders (SOPOs)

- 1.16.15 Introduced by the **Sexual Offences Act 2003**¹¹¹, SOPOs are civil preventative orders designed to protect the public from serious sexual harm.
- 1.16.16 A court may make a SOPO when it deals with an offender who has received a conviction for an offence listed at Schedule 3 (sexual offences), or Schedule 5 (violent and other offences), to the Act who is assessed as posing a risk of serious sexual harm. Also, the Police can apply for a SOPO to a Magistrates' Court in respect of an offender who has a previous conviction or caution for a Schedule 3 or 5 offence who poses a risk of serious sexual harm.
- 1.16.17 SOPOs can be made on application from the Police, so any Violent or Sex Offender who poses a risk of serious sexual harm should be referred to MAPPA agencies and the police in particular. In an application for an order the police can set out the prohibitions they would like the court to consider.
- 1.16.18 Further information on Disqualification Orders is outlined in **Working Together to Safeguard Children 2006**¹¹² paras 12.50 – 12.54.

¹¹¹ <http://www.opsi.gov.uk/ACTS/acts2003/20030042.htm>

¹¹² <http://www.everychildmatters.gov.uk/files/AE53C8F9D7AEB1B23E403514A6C1B17D.pdf>

Risk of Sexual Harm Orders (RSHOs)

- 1.16.19 Introduced by the **Sexual Offences Act 2003**¹¹³, RSHOs are civil preventative orders used to protect children from the risks posed by individuals who do not necessarily have a previous conviction for a sexual or violent offence but who have, on at least two occasions, engaged in sexually explicit conduct or communication with a child or children and who pose a risk of further such harm. For a RSHO to be made it is not necessary for there to be a risk that the defendant will commit a sexual offence against a child – the risk may be that s/he intends to communicate with children in a sexually explicit way. The RSHO can contain such prohibitions, as the court considers necessary. For example, an adult could be found regularly communicating with young children in a sexual way in internet chatrooms. A RSHO could be used to prohibit the person from using the internet in order to stop him/her from such harmful activity.
- 1.16.20 RSHOs are made on application from the Police, so any person who is thought to pose a risk of sexual harm to children should be referred to the Police. In an application for an order the Police can set out the prohibitions they would like the court to consider.
- 1.16.21 Further information on Disqualification Orders is outlined in **Working Together to Safeguard Children 2006**¹¹⁴ paras 12.55 - 12.77.

¹¹³ <http://www.opsi.gov.uk/ACTS/acts2003/20030042.htm>

¹¹⁴ <http://www.everychildmatters.gov.uk/files/AE53C8F9D7AEB1B23E403514A6C1B17D.pdf>

1.17 Fraser Guidelines

1.17.1 It is good practice for doctors and other health professionals to follow the criteria outlined by Lord Fraser in 1985, “The House of Lords” ruling commonly known as the Fraser Guidelines.

- Ø The young person understands the health professional’s advice.
- Ø The health professional cannot persuade the young person to inform his or her parents or allow the doctor to inform the parents that he or she is seeking contraceptive treatment;
- Ø The young person is very likely to begin or continue having intercourse with or without contraceptive treatment;
- Ø Unless he or she receives contraceptive advice or treatment, the young person’s physical or mental health or both are likely to suffer;
- Ø The young person’s best interests require the health professionals to give contraceptive advice, treatment or both without parental consent.

1.18 Public Law Outline – Issuing Care Proceedings

- 1.18.1 The Judicial Protocol was replaced by the Public Law Outline (PLO) on 1 April 2008. The department for children, school and families has published revised Children Act 1989 volume one "Court Orders" guidance which must be followed by local authorities. The President of the Family Division, Sir Mark Potter, has issued a new practice direction setting out the Public Law Outline, determining how S31 care and supervision cases are to be managed. Copies of all the relevant documents can be found at: www.justice.gov.uk/guidance/careproceedings.htm

- Paragraph 3.12* *Where there is a referral to local authority (LA) that a child may be in need – the LA are to decide within one working day whether to undertake an initial assessment which should be completed within 7 working days of date of referral – using the "Assessment Framework".*
- Paragraph 3.14* *LA must decide within 48 hours of receiving information whether child protection investigation is required (s47 Children Act 1989) and what action, if any, is required.*
- Paragraphs 3.15 and 3.16* *Core assessment must always be completed if initial assessment concludes there is cause to suspect that the child is, or is likely to, suffer significant harm. This should be completed within 35 working days. Timescales for specialist assessments should be agreed and specified in core assessment.*
- Paragraph 3.17* *The core assessment forms the central part of the evidence supporting an application for a care or supervision order. Local authorities must ensure that an up to date core assessment is available in relation to any child who is the subject of an application under s.31 of the Act.*
- Paragraph 3.23* *Emphasises the need for full inter agency co-operation, including sharing information for the purpose of safeguarding children. Information from health professionals is likely to be of particular importance.*
- Paragraph 3.24* *Local authority legal advisers have a key role in providing advice about the requirements of the court and the making of the application. Parents, child (if of sufficient age and understanding) and others with a legitimate interest in the child's future should be involved in the pre-application assessment process and consulted about the plan for the child.*
- Before deciding to issue care proceedings the LA should explore whether the child can safely be cared for by a relative or friend - guidance suggests use of family group conference.***

Prior to issuing proceedings

- 1.18.2 Once the local authority decides, having sought and considered legal advice, that it intends to issue care proceedings, the local authority must immediately notify that decision to parents and any other person with parental responsibility, using language and methods of communication both in writing and orally, that will be understood by the parents. On receipt of this notification (called the letter before proceedings) the parents are entitled to non means tested legal aid which covers liaison and negotiations with the local authority. (Para. 3.25 and 3.26).
- 1.18.3 Unless urgent court action is required to safeguard the child, the LA should liaise with parents to see if proceedings can be avoided (paragraph 3.27). If parents consent, the LA should explain to child (if of sufficient age and understanding), the intention to commence care proceedings (paragraph 3.28). After meeting with parents (and possibly their solicitor) the LA should confirm to parents orally and in writing any revised plan for the child including the possibility of the child living with a relative or friend (paragraphs 3.31 and 3.32).
- 1.18.4 If the LA remains concerned, or again becomes concerned, that child is suffering or is likely to suffer significant harm, LA remains responsible for making application to court for care or supervision order (paragraph 3.33 and flow chart).

Making the Application

- 1.18.5 Before proceeding with an application to court, the LA should always obtain and consider legal advice on:
- (a) whether;
 - i) criteria in s31(2) Children Act 1989 are met; *and*
 - ii) that s1(5) "no order" test is likely to be met;
 - (b) the care plan
 - (c) the court to which application should be made
 - (d) whether court should be asked to make interim care or supervision order and what directions should be sought (paragraph 3.34)
- 1.18.6 The practice direction specifies, in a "pre-proceedings checklist", the documents to be disclosed to court in support of the application.

SUPPLEMENTARY FORM PLO 1 (04.08)

Application for a care order or supervision order: Supplementary Form

PART 1 - Pre-proceedings checklist

This checklist must be completed and filed by the local authority with any application for a care order or supervision order to specify the pre-proceedings documents filed with the application [Column (a)] and to identify those which are not applicable [N/A]. If any relevant document is not filed with the application, the reason and any expected date of filing must be stated [Column (d)]. Columns (b) and (c) are for use by the court to record any pre-proceedings documents filed subsequently.

All documents filed with the application must be clearly marked with their description and numbered consecutively in the following sequence.

	Category	Document	N/A	(a) Filed on issue	(b) Filed by FA	(c) Filed by CMC	(d) Reason not filed/ expected date of filing
	Documents prepared for the proceedings						
1	Schedule of Proposed Findings						
2	Initial Social Work Statement						
3	Care Plan						
4	Allocation Record and Timetable for the Child						
	Documents held by the local authority						
5	Previous proceedings	Orders					
		Judgment/reasons					
6	Any relevant assessment materials	Initial/core assessment					
		Section 7 & 37 reports					
		Relatives and friends materials (e.g. a genogram)					
7	Other relevant reports and records	Single, joint or inter-agency materials					
		Records of discussions with the family					
		Key LA minutes and records for the child, (inc. Strategy Discussion Record)					

	Category	Document	N/A	(a) Filed on issue	(b) Filed by FA	(c) Filed by CMC	(d) Reason not filed/ expected date of filing
8	Pre-existing care plans (e.g. child in need plan, looked after child plan & child protection plan)						
9	Social Work Chronology						
10	Letters Before Proceedings						
11	Other relevant pre-proceedings documents (specify)						

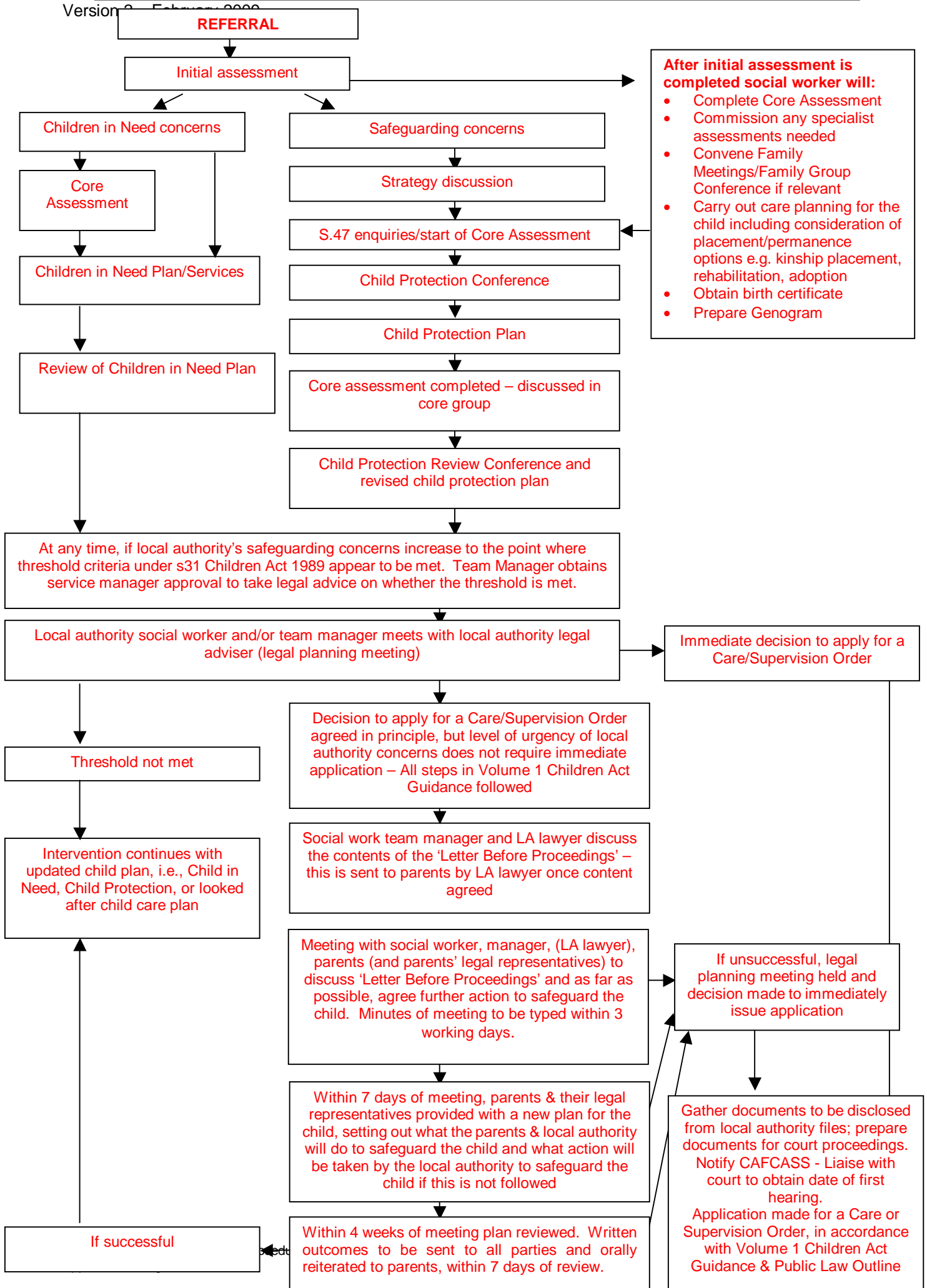
PART 2 - Record of case management documents filed

This Part is for use by the court to record case management documents filed with the court for Stages 1, 2 and 3

		Filed for FA	Filed for CMC	Filed for IRH	Notes
1	Local Authority Case Summary				
2	Other Parties' Case Summaries				M
					F
					Other
3	Parties' initial witness statements				M
					F
					Other
4	Cafcass/Cafcass Cymru Case Analysis and Recommendations				
5	Draft Case Management Order for CMC/IRH				
6	Other case management documents (specify)				

Flowchart: Pre-proceedings – Public Law Outline

Version 2 February 2009



- After initial assessment is completed social worker will:**
- Complete Core Assessment
 - Commission any specialist assessments needed
 - Convene Family Meetings/Family Group Conference if relevant
 - Carry out care planning for the child including consideration of placement/permanence options e.g. kinship placement, rehabilitation, adoption
 - Obtain birth certificate
 - Prepare Genogram

Immediate decision to apply for a Care/Supervision Order

If unsuccessful, legal planning meeting held and decision made to immediately issue application

Gather documents to be disclosed from local authority files; prepare documents for court proceedings. Notify CAFCASS - Liaise with court to obtain date of first hearing. Application made for a Care or Supervision Order, in accordance with Volume 1 Children Act Guidance & Public Law Outline