

THE CHILDREN ACT 1989

**Updated in the light of the
Adoption and Children Act 2002**

Diversity Issues in the Training Setting

People who present courses for Reconstruct make some assumptions, even though we're supposed not to, about participants.

These are that the group will contain people from a diverse range of backgrounds, some visible some less visible, some personal some professional. This diversity will cover gender, race, sexual orientation, disability and a lot more including personal experiences, class and religious persuasion.

So this means that the course will

- be presented using variety because people have different learning styles,
- describe concepts using a variety of examples.

The presenters will

- avoid jargon (or at least explain it),
- be aware of individual differences within the group and respect these,
- avoid the stereotyping of particular groups in society,
- be aware of the effect of language,
- accept that everyone has the right and the responsibility to challenge.

Additionally the facilitators hope that participants will:

- arrive punctually and stay (but explain unavoidable absences),
- respect each other,
- maintain the confidentiality of sensitive information,
- recognise and value difference,
- share experiences,
- ask questions,
- challenge views constructively.

We hope that this will provide a useful framework within which learning and development can take place.



Children Act 1989 - Parts I – V

Key Areas

The Children Act 1989 is a relatively simple act of Parliament, segmented into Parts, each part covers specific areas of work.

- **Part I** contains some of the main principles and the concept of parental responsibility,
- **Part II** contains the law relating to Family Proceedings,
- **Part III** and Schedule 2 contain the Local Authority duties and responsibilities,
- **Part IV** and Schedule 3 contain the care and supervision provisions,
- **Part V** contains the provision for the emergency protection of children,
- **Parts VI - VIII** and Schedules 4, 5 and 6 contain law relating to voluntary organisations, schools and registered Children's Homes,
- **Part IX** and Schedules 7 and 8 contain fostering provisions,
- **Part X** and Schedule 9 contain law relating to childminders,
- **Part XI** contain the Secretary of State's Functions,
- **Part XII** contain miscellaneous provisions.

The Adoption and Children Act 2002 has updated some areas of the Children Act 1989 and, where applicable, these have been contained in this document.

Part I

Introduction

Section 1 of the Act contain some of the key philosophical points. These points apply throughout the whole of the Act.

THE PARAMOUNTCY PRINCIPLE s.1(1) is that “the welfare of the child is paramount throughout his life”. This principle will at all times overrule any other principle and will be particularly used by workers when deciding on situations wherein there are a number of principles in conflict.

ASCERTAINING THE WISHES AND FEELINGS OF CHILDREN (considered in the light of their age and understanding) s.1(3). This principle is in two parts inasmuch as a worker must always ascertain the child's wishes and feelings but will decide how much to act upon these in the light of the child's age and understanding. The need to ascertain the wishes and feelings of children is stressed throughout the Act.



Ascertaining the wishes and feelings of children (in the light of their age and understanding) is first mentioned in the Court checklist, s.1(3)(a). This checklist needs to be taken into account at all s.8 order hearings and care and supervision order applications.

Children have the right to apply for leave to apply for s.8 orders and to vary or discharge care, supervision, emergency protection and child assessment orders.

Before making any decision regarding the placement of children looked after by the Local Authority the social worker will ascertain the wishes and feelings of the child s.22(4)(a) and s.22(5)(a).

At all case reviews the child's views will be sought, s.26(d)(i). The child will be informed "**of any steps he may take under this Act**", s.26(g). These are that the child may apply for leave to apply for the order or any directions therein to be varied or revoked or to apply for leave to apply for a s.8 order.

Children always have the right to refuse to be medically examined providing that they are of suitable age and understanding, s.43(8) s.(44)(7) even though the court has directed that they shall be examined. In the final analysis the judgement as to whether a child can withhold consent for examination will rest with the doctor concerned. This would hold even in situations where the Social Services Department, Guardian-ad-litem and Court believe the child to not be of suitable age and understanding.

The Adoption and Children Act 2002 has added the requirement that children have the right to an advocate when they are making complaints to the local authority.

The Children Act 2004 section 53 strengthens the need to ascertain children's wishes and feelings in terms of being looked after and being subject to child protection enquiries,

Working Together to Safeguard Children (2006) further emphasises the need to ensure that the child's voice is heard during the child protection enquiry (by making sure that they are seen alone from their parents) and during the case conference itself.

Points to note here are that there can be no definitive age stated for when a child is of sufficient age and understanding as this will depend upon each individual child, the child's ability and the situation that needs to be decided upon.



DELAY IS LIKELY TO PREJUDICE THE WELFARE OF THE CHILD s.1(2).
THE COURT CHECKLIST s.1(3). The following list will be considered in all Court proceedings relating to children except emergency applications.

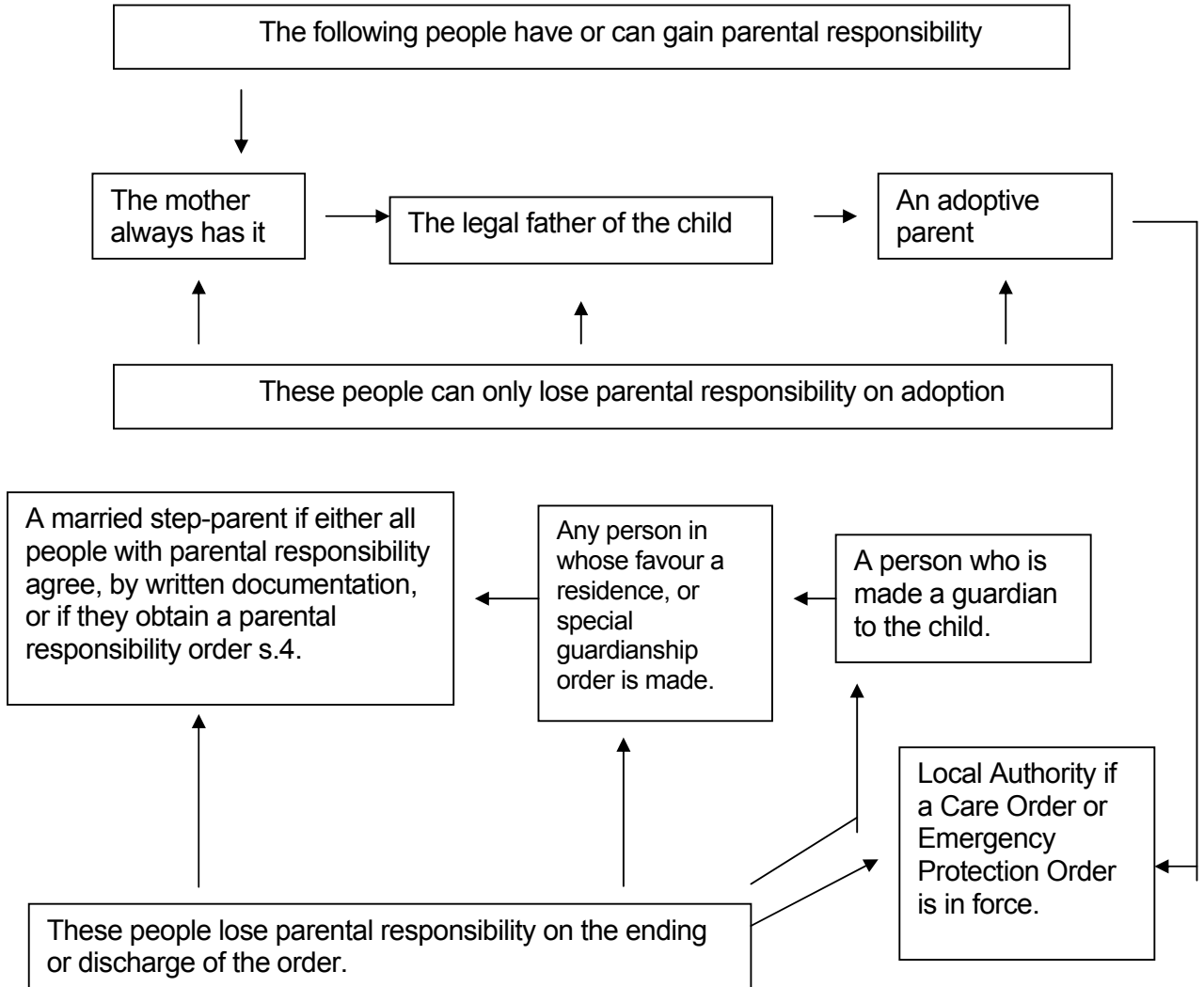
- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding),
- (b) his physical, emotional and educational needs,
- (c) the likely effect on him of any changes in his circumstances,
- (d) his age, sex, background and any characteristics of his which the court considers relevant,
- (e) any harm that he has suffered or is at risk from suffering,
- (f) how capable each of his parents, and any other person whom the court considers the question to be relevant, is of meeting his needs,
- (g) the range of powers available to this court under this Act in the proceedings in question.

There is no mention in this checklist of race, religion, language and culture. Presumably this would be covered under (d) as could the sexuality of the child. This failure to mention race in such a crucial part of the Act underlines the ambivalence that the Children Act takes towards race issues. It is impossible to imagine how the paramount principle can be applied to a black child without any consideration of race, religion, language and culture.

A COURT WILL NOT MAKE AN ORDER UNLESS IT CONSIDERS THAT DOING SO WOULD BE BETTER THAN MAKING NO ORDER AT ALL s.1(5). In the future therefore hearings will not only consider the suitability of the parents but whether or not the plan proposed by the Social Services Department is better than the care that the child was receiving at home.



PARENTAL RESPONSIBILITY Parental responsibility



In the instance of two or more people sharing parental responsibility they shall do so equally unless one has a special guardianship order in which case that person is able to make decisions against the wishes of the other people with parental responsibility. In the case of a special guardianship order being shared those people sharing the order will equally share parental responsibility and are able to make decisions against the wishes of the other people with parental responsibility.

A PERSON WHO HAS CARE OF THE CHILD, “but does not have parental responsibility, may do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child’s welfare,” s.3(5). This could be used by staff such as R.S.W’s, foster carers, health Authority staff, nursery officers and teachers to keep a child in their care for a short period of time if it seems to them that to release the child would be to place the child at risk. However I would advise that this could only be used as a temporary hold perhaps whilst waiting for the police or Social Services to intervene.

s.2(9) states that **“a person with parental responsibility cannot give that responsibility to another but can allow another to exercise all or some of the responsibility in practice.”**

Part II

Family Proceedings

Part II of the Act contains Family law relating to children. Phrases such as custody, access and control have been replaced by residence and contact orders. In particular Part II of the Act contains s.8 orders;

- **Residence** - this decrees where a child shall live. The person in whose name the residence order is made has parental responsibility for the child and can, in instances of disagreement between themselves and others with parental responsibility, overrule the other parties.
- **Contact** - this decrees the contact that a child shall have with anyone named in the order. Contact can be as visiting, telephone conversations, letter or photographs. Normally this will be used with the father of the child but it can be used for **“any person whom the Court considers the question to be relevant”**. It cannot be made if a child is subject to a care order. In that instance a care contact order s.34 can be made.
- **Prohibited Steps** - this is used to prohibit the action that a person can take with regard to a particular child. It stops an action happening.
- **Specific Issue** - this can be used to decide a specific issue relating to a child. It allows an action to happen.



Local Authorities can apply directly for specific issue and prohibited steps orders. They are unable to directly apply for residence and contact orders though they can request that they be added as directions to supervision orders. It is very rare for local authorities to make application for s8 orders.

Special Guardianship Orders have been introduced by the Adoptions and Children Act 2002. They sit between a residence and adoption order inasmuch as they can allow a change of name (with the Court's permission) and, unlike a residence order, they bestow upon the holder a higher level of parental responsibility than other people with parental responsibility. It is not possible to have a special guardianship order and a care order.

Part III

Local Authority Support for Children and Families

Part III of the Act contains all of the services that a Local Authority can provide in agreement with families.

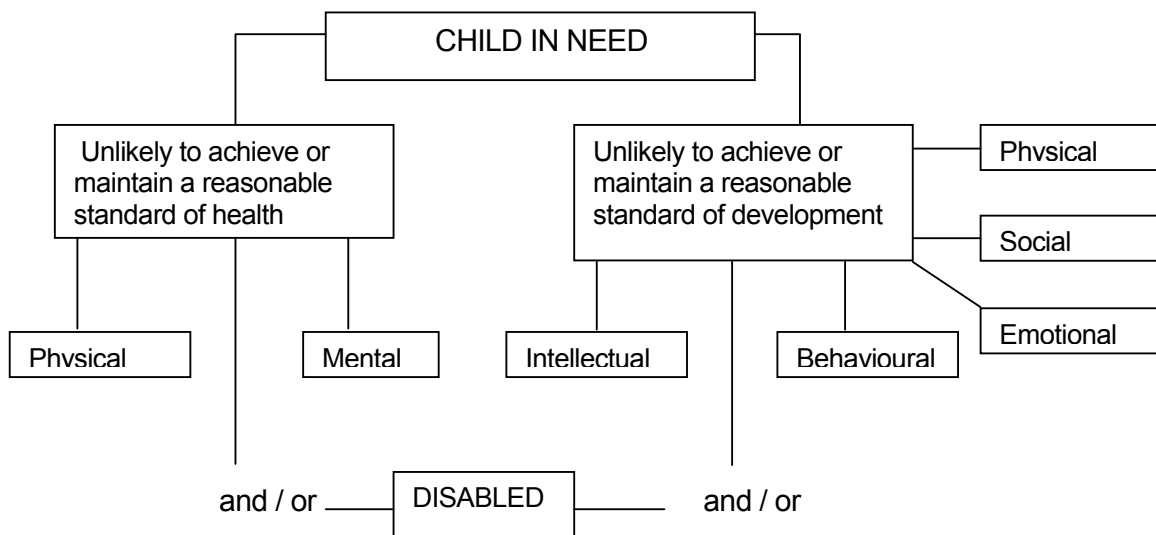
Services need not be provided by the Local Authority directly they can purchase services or encourage voluntary organisations. The range of services could include; respite care, nursery provision, telephones, holidays, cash, accommodation etc.

The principle of partnership with parents is enshrined in Part III. No service under this Part can be provided unless in partnership with parents including the drawing up of a written agreement.

Child In Need

The Part is built around the notion of "children in need". A child is deemed to be in need if they are unlikely to achieve or maintain a reasonable standard of health or development without the provision of a service or the child has a disability that is permanent and substantial. The full description is found in s.17 of the Act. Development is defined as physical, emotional, intellectual, behavioural or social, health is physical and mental health.





Parents In Partnership

PARENTS IN PARTNERSHIP is a key theme in the Children Act. Although it is not actually mentioned in the Act itself it is implied through the notion of shared parental responsibility, the need to seek the views of parents and anyone with parental responsibility and the fact that all services provided under Part III of the Act need to be offered in partnership underpinned by written agreements. Partnership is mentioned throughout the Guidance documents produced by the Department of Health.

Partnership is not equality. Partnership means different things to different people but it must a minimum be; respecting and treating members of the public as adults, sharing information, being open to criticism, being prepared to learn from our clients, and seeing ourselves as providers of a service.

The use of well written agreements must at least help to underpin partnership as it ensures that everyone knows what everybody is doing, why they are doing it and what consequences can befall anyone (including the worker) not completing their task.

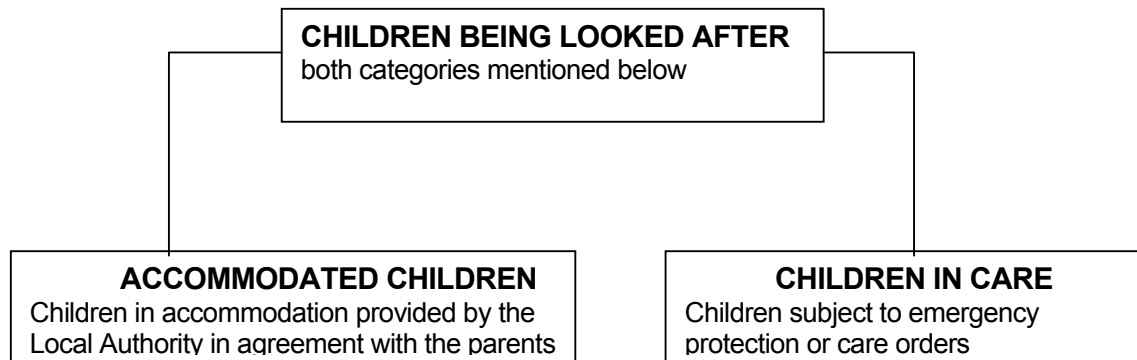
Religion, Race, Culture And Language

The writers of the Children Act decided against making a comment about race, religion, language and culture in Part I of the Act, "Court checklist". They finally discuss these issues in Part III s.22(5) making no more commitment than that the Local Authority shall "give due consideration". It is clear therefore that local policy must be relied upon to ensure that this area is given more than insufficient consideration.



Section 17 is the part of the Act where a local authority can make payments to families of children in need. The Adoption and Children Act 2002 has also made it possible for accommodation to be offered to children under section 17. Section 17 accommodation means that the child is not “looked after” by the local authority thus avoiding the need to assess the carers as foster cares, have the child visited by a social worker or hold reviews. However this aspect of the Act is designed for kinship care, not as a cheap alternative to section 20 accommodation.

Responsibilities Towards Children Who Are Being Looked After



The Act places a great deal of responsibility towards children who are being looked after, this includes children who are subject to orders and those being accommodated.

Provision Of Accommodation

Section 20 accommodation carries the same local authority responsibility as a care order, children need to be visited and reviewed.

Young people aged sixteen can request accommodation in their own right even against the wishes of their parents if the Local Authority thinks that the child's welfare will be seriously prejudiced without the provision of accommodation, s.20(3).

S.20(7) states that a Local Authority cannot offer accommodation if a person with parental responsibility who can offer (or arrange) alternative accommodation objects.

Foster carers who have had the child live them for 12 months in any three year period can apply for a residence, or special guardianship, order against the wishes of the local authority.

People with parental responsibility can remove their child from accommodation at any time without the agreement of the local authority unless the child has lived with the same set of foster carers for 5 years or more.



Part IV

Care And Supervision Orders

Part IV and V of the Act are built around the concept of “at risk from significant harm”. Harm is defined in similar terms to “need” inasmuch as a child is being harmed if his / her health (physical or mental) or development (emotional, social, intellectual, physical or behavioural) is being avoidably impaired. The threshold criteria shifts between Parts IV and V as having reasonable grounds for suspicion can warrant an application for Part V orders, Child Assessment or Emergency Protection, whereas proof will be needed for an application for Part IV, care or supervision orders. The distinction between “in need” and “at risk from significant harm”, given that they both have the same definition of health and development can be seen in terms of responsibility. If the child is not reaching a reasonable standard of health or developing because of the lack of a service then the child is in need, if the child is not reaching a reasonable standard of health or development because of something that the parents are doing (or are not doing) then the child is at risk from harm. The Act does not define the word “significant” and it is this area where much of the debate and argument will occur. Clearer definitions will emerge after case law has occurred.

AT RISK FROM SIGNIFICANT HARM is prospective, “at risk” and harm in the past, although admissible as evidence of harm in the future, is not in itself proof. The Adoption and Children Act 2002 has added the wording; *“for example, impairment suffered from seeing or hearing the ill-treatment of another”*.

CARE ORDER The grounds for an application for a care order are first that the child is “at risk from significant harm” and that the harm is attributable to either; the parents care of the child falling below the level that it would be reasonable to expect, or, the child is beyond parental control.



CARE ORDERS IN PRACTICE Parental responsibility is shared between the Local Authority and parents when a child is made subject to a care order. S.33(3) states that the Local Authority can limit the parents' right to exercise their parental responsibility. S.33(4) states that the Local Authority can however only limit the parents' right to exercise their parental responsibility if otherwise the child's welfare would not be promoted or safeguarded. In other words the Local Authority can limit the exercising of parental responsibility by parents, but only if they have good reason. This decision will have to be made before the Local Authority present their plan to the Court in care proceedings as it will obviously form a major plank of that plan.

Effect Of Care Order

A care order lasts until a child is eighteen, unless it is brought to an end by a residence order [s.91(1)] or by its discharge under s.39. The making of a care order discharges any s.8 order. The parent of the child does not cease to have parental responsibility once the child is placed under a care order.

Supervision Order

This requires the same threshold as that required by a care order. Supervision orders (1989) are not greatly different from (1969) in form, though with direction and use in conjunction with other orders, will be different. They cannot in the first instance be made for longer than one year, thereafter they are renewable for up to three years. However the Court may use a number of orders in conjunction with each other and I believe that there will be a greater use of supervision orders in the future as they will often have other orders and / or directions attached to them. I also believe that there will be less use of care orders, some being replaced with supervision plus s.8 order. Therefore it will be incumbent upon social workers to place a higher priority on supervision orders in the future.



Interim Care And Supervision Orders

Interim care and supervision orders can last for 56 days (the first one), thereafter 28. Directions can be attached to both.

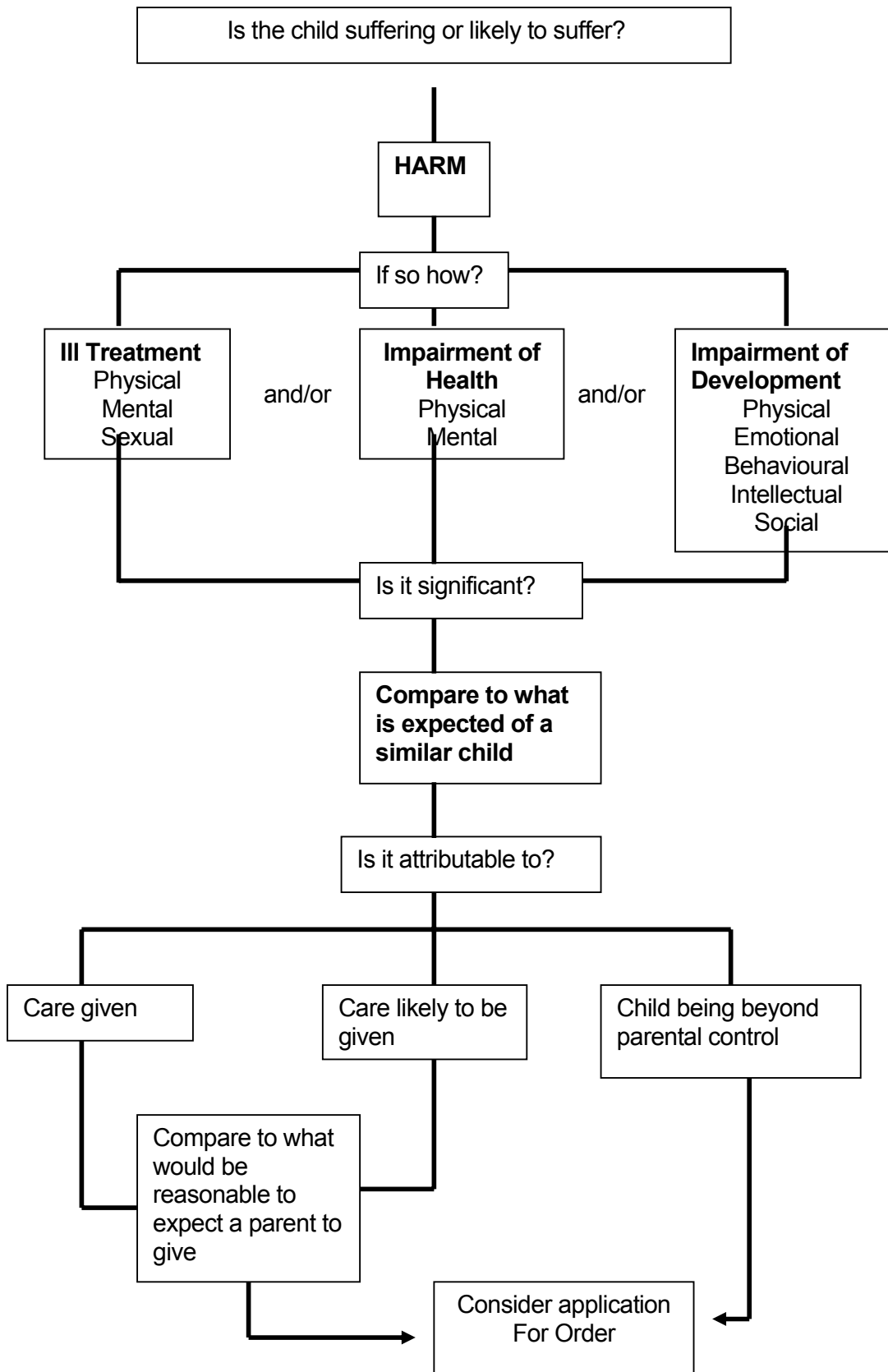
The court may give such directions as it considers fit with regard to medical or psychiatric examinations or other assessments or it may direct that no examination takes place. The child may refuse to be examined if she or he is old enough to make an informed decision.

Powers Of Court

Where, in any family proceedings it appears to the court that it may be appropriate for a care or supervision order to be made with respect to a child the court may direct the Local Authority to investigate. The Local Authority must report their action back to the court within eight weeks unless the court decides otherwise, s.37.

Overleaf is a flowchart taken from a design presented in the National Children's Bureau training pack "The Children Act 1989 - Child Protection".





Part V Emergency protection

Perpetrator payments

Schedule 2, paragraph 5, allows the Local Authority to offer assistance, including cash, to an alleged perpetrator to allow him / her to leave the home if this means that the child need not be removed. This does not give the Local Authority the right to remove the perpetrator against his / her wishes. In practice this is most likely to be used with men in child sexual abuse cases.

Child Assessment Order

The child assessment order has no parallel in earlier child care legislation. According to Guidance, it can only be applied for by the Local Authority after the decision has been reached at a multi-disciplinary case conference. It is to be used in a circumstance where a child is felt to be at risk from significant harm, but not in immediate danger and that it is felt that an assessment will help the Authority to be clearer in regard to their suspicion. It is not to be used in an emergency. It lasts for seven days, but can begin at any point from the order being made until six months later. The application must specify when and which examinations and assessment are to be carried out. The applicant will have to receive permission of the Court for each assessment. The assessment order is not therefore a blank cheque. It cannot be made less than six months following the dispersal of a previous assessment order, or the discharge of a care or supervision order with leave of the Court. Assessments are likely to be medical, psychological or psychiatric. A child of suitable age and understanding may refuse to submit to any assessment even though an order has been made.

If after an assessment order has been made the person fails to produce the child for the assessment, the applicant must make immediate enquiries to establish whether there is an adequate explanation. Deliberate refusal to comply must add to the concern for the child's welfare and would probably be sufficient to satisfy the conditions for an emergency protection order.

Emergency Protection Order

The emergency protection order replaces the place of safety order available under the Children and Young Person's Act 1969. Any person may apply though it is rarely going to be applied for by anyone but a Local Authority or the N.S.P.C.C., and in some circumstances the Police. The grounds for making an order with respect to a child are if the Court "is satisfied that";



There is reasonable cause to believe that the child is likely to suffer significant harm if:

- (i) he is not removed to accommodation provided by or on behalf of the applicant; or
- (ii) he does not remain in the place in which he is then being accommodated.

It is worth noting that the Act also states that if a social worker is frustrated in carrying out enquiries under s.47 (the duty to investigate child abuse) the social worker shall apply for an emergency protection order unless the worker can be sure that the child is safe. The emergency protection order is based on the premise that it can only be justified when there is sufficient evidence to indicate risk of significant harm. The test is prospective, unlike in the Children and Young Person's Act 1969. Evidence of harm in the past is not sufficient, unless it indicates that further harm is more likely to occur than not. It is not justified simply to enable an investigation into child abuse, unless that investigation is being unreasonably obstructed.

The emergency protection order can last for a maximum of eight days and can be renewed once for a further period of seven days. People with parental responsibility must be notified of the hearing, unless the Court agrees that the matter can be heard without them. They may apply for the order to be discharged after 72 hours if they were not present during the initial application hearing, s.45(8). Special conditions regarding medical examinations or any other assessments or examinations. The Court may also give directions regarding contact with the child by any named person, s.44(6)(a).

The order has three effects

- 1) the child must be produced
- 2) the child can be removed from the care of the person with parental responsibility and
- 3) the applicant acquires parental responsibility

It is incumbent upon the applicant to use only the minimum amount of power inherent in the order to safeguard the child's welfare. For example, if the abuser leaves the home the applicant may no longer remove the child even though the order remains in force unless the abuser returns. If it appears to the applicant "that it is safe for the child to be returned; or...that it is safe for the child to be allowed to be removed from the place in question, then he shall return the child...or allow him to be removed", s.44(10).



If it is suspected that another child resides at the address “with respect to whom an emergency protection order ought to be made, it may make an order authorising the applicant to search for that other child on those premises”, s.48(4). If having found that other child, it is clear that she or he is at risk from significant harm, the order to search “shall have effect as if it were an emergency protection order”, s.48(5). Any person wilfully obstructing the applicant shall be committing an offence. A Court satisfied that a person is wilfully obstructing the applicant may “issue a warrant authorising any Constable to assist...in the exercise of those powers, using reasonable force if necessary”, s.48(9).

Police Protection

Police Officers may exercise their powers to remove children without recourse to Court as they do now. The difference is that there is no order as such, rather the concept of “police protection” s.46 and the maximum length of time is 72 hours as opposed to the present 8 days. The Police may apply on behalf of the Local Authority for an emergency protection order without their knowledge and / or agreement. The guidance states that this would be inappropriate.

