

Manual:	Foster Carers Handbook;
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INTRODUCTION

The Children Act has been described as "the most comprehensive and far-reaching reform of child law which has come before Parliament in living memory".

The Act is a very important piece of child care legislation. Not only does it bring together under one Act a whole range of legislation relating to children, but it also introduces new principles for the way in which we work with children and their families.

This document contains explanations about some of the concepts and orders covered by the Children Act.

PARENTAL RESPONSIBILITY

The Act introduces the concept of parental responsibility. This is defined as "all the rights, duties, powers, responsibility and authority which by law a parent of a child has in relation to a child and his property". Parental responsibility continues whatever the circumstances of the child, other than in adoption. If parental responsibility is acquired through a court order that court may bring that order to an end.

The concept of parental responsibility reflects the principle that peoples rights as parents are restricted to those that they need in order to discharge their parental duties adequately. Guidance to the Children Act 1989 emphasises that the duty to care for the child and to raise him/her to moral, physical and emotional health is the fundamental task of parenthood and the only justification for the authority that it confers. Parents have power so that they can bring up their children.

The responsibilities of parenthood change over time and according to circumstances. They diminish as children mature and become capable of making decisions for themselves.

The general principles of welfare and parental responsibility should be followed through to encourage partnership with parents, the emphasis being, so far as possible, on operating on the basis of consent, and full and informed participation.

Who has Parental Responsibility?

1. The child's parents if they were married to each other at or after the time of his/her conception. Otherwise the mother alone has parental responsibility.
2. A father who does not automatically have parental responsibility can acquire it through a 'parental responsibility agreement' or through the granting of a court order. Both may only be brought to an end by a court order (Section 4). Where a residence order is made in favour of a father, an order under Section 4 must be made and will only end if a court decides specifically that it should.
 - A father who does not have parental responsibility is still a parent for the purpose of the Act.
3. Other people may acquire parental responsibility by appointment as a guardian, or by an order of the court.

The Exercise of Parental Responsibility

1. The fact that one person acquires parental responsibility does not in itself remove another's parental responsibility.
2. Parental responsibility cannot be passed on to someone else or otherwise given up. A person with parental responsibility may arrange for another person to meet that responsibility on his behalf e.g. during a stay in hospital.
3. Where more than one person has parental responsibility for a child at the same time, one may act independently of the other(s).

When a Child is in Care

The only exception to the rule which permits independent action to meet shared parental responsibility arises when a child is in care i.e. on a Care Order, where the Service is given power to determine the extent to which another person with parental responsibility may act.

Care but not Parental Responsibility

If a person has care of a child for whom he does not have parental responsibility, Section 3(5) of the Children Act 1989 empowers him to do what is reasonable in the circumstances to safeguard or promote the child's welfare.

ACCOMMODATION UNDER SECTION 20

The Service has a duty to safeguard and promote the welfare of children in need in their area by providing a range of services to the child and the family. One of the services which may be provided is "accommodation" under Section 20 of the Children Act 1989, in a foster home or children's home.

"Accommodation" is a legal term which is defined as any stay lasting for more than 24 hours.

A person can approach the Service and ask for a child to be accommodated, in the same way that they might ask for help with child-minding. The Service has to conduct an assessment of the child's needs and be satisfied that one of the following conditions apply:

- There is no-one with parental responsibility for the child; or
- The child is lost or has been abandoned; or
- The person who usually cares for the child is prevented (for whatever reason) from providing suitable care or accommodation for the child; and
- There is no family member or friend who can provide accommodation.

When the assessment identifies that the child is in need of accommodation the arrangement becomes one of agreement between the parties, who enter into a partnership together.

The expected arrangement is that the parents and the child will be fully involved in the planning and decision making process and will take full and active part in the placement.

The aim will be to return the child home to the family as quickly as possible and with the minimum disruption.

This is a voluntary arrangement and the parents have the right to remove the child at any time from accommodation, although how the placement will be ended should have been agreed during the planning process. They will continue to retain parental responsibility for the child which means, for example, that except in exceptional circumstances, they will retain responsibility for consenting to medical examinations and treatment.

IMPORTANT COURT ORDERS

When any application is put before the Court by the family, (including separation/divorce proceedings) by the Service, or by any other person, the Court has the power to make any Order which it thinks will best benefit the child. The Court will not make an Order unless it believes that an Order would benefit the child.

The Court can make any of the following Orders;

Residence Order

This is an order which decides who the child will live with. It gives automatic parental responsibility to the person in whose favour it is made in addition to parents.

- A Court can make a Residence Order in favour of more than one person at a time. For example, to enable a child to live with one parent during the week and the other parent at weekends.
- Foster Carers can apply for a Residence Order in respect of a child who is the subject of a Care Order, whom they are fostering or have fostered within the last six months, in the following circumstances:
 - You have the consent of the Service; or
 - You are a relative of the child; or
 - The child has lived with you for 3 years.

We believe that planning is very important when a foster carer is considering applying for Residence Order. Therefore we ask foster carers to discuss this with the child's Social Worker and Fostering Supervising Social Worker. These workers would assess your circumstances and the child's and write a report which would be presented to the fostering panel for approval. If your application was recommended by the Panel and supported by the Service, we would be able to put this in writing to the Court and we can, in some circumstances, pay your legal fees and pay a Residence Order Allowance.

After three years you can apply without the Service's consent.

Two further important points to note:

- Residence Orders usually only last until the child is 16 although they can be extended in "exceptional circumstances";
- The making of a Residence Order discharges the Care Order.

Definition of a special guardianship order

A special guardianship order is an order appointing one or more individuals to be a child's 'special guardian'. It is a private law order made under the Children Act 1989 and is intended for those children who cannot live with their birth parents and who would benefit from a legally secure placement. It has more powers than a residence order because a parent cannot apply to discharge it unless they have the permission of the court to do so, however it is less secure than an adoption order because it does not end the legal relationship between the child and his/her birth parents.

Who can apply?

The following people may apply to be special guardians:

- Any guardian of the child.

- Any individual who has a residence order or any person where a residence order is in force and who has the consent of the person in whose favour the residence order is made.
- Anyone with whom the child has lived for at least three years out of the last five years.
- Anyone with the consent of the local authority if the child is in care.
- A local authority foster parent with whom the child has lived for at least one year preceding the application.
- Anyone who has the consent of those with parental responsibility.
- Anyone who has the leave of the court.
- NOTE: You must be over 18 years of age and you can apply on your own or jointly with another person.

Contact Order

If parents cannot reach agreement about the contact arrangements for their child the Court can make a Contact Order. This will detail who the child should have contact with and the form the contact should take e.g. visits, letters, phone calls.

The Court can attach conditions e.g. that the contact must be supervised.

Specific Issues Order

You will probably only very infrequently come across this order. The aim of a Specific Issue Order is to enable a particular dispute over a child to be resolved by the court e.g. a dispute over a child's schooling or medical treatment.

The Service can apply for a Specific Issues Order if there is a difficult medical or ethical issue to be determined e.g. the sterilisation of a minor who is being looked after.

NOTE: Children and Young People's Service cannot apply for a Residence Order or a Contact Order

Prohibited Steps Order

Again you should rarely come across this order. The purpose of this type of order is to impose a specific restriction on a parent from exercising their parental responsibility e.g. to prohibit one parent from removing a child from the country.

Care Order

The Children Act has simplified the grounds for applying for a Care Order. The only ground to be satisfied is that the child is suffering harm and that this is attributable to lack of adequate parental care or control.

Even if the ground is proved, the court must be satisfied that making a Care Order would have positive benefits for the child.

When a Care Order is made Children and Young People's Service acquires parental responsibility for the child which is shared with the parents and is responsible for safeguarding and promoting the child's welfare.

The Service must promote contact between the child and their parents and other important people. If there is a disagreement about contact, the court can make a Contact Order under Section 34 (this is different from a Section 8 Contact Order - see above). This order will detail

who the child should or should not have contact with and the form the contact should take e.g. visits, letters, phone calls. A child can apply for a Contact Order.

Supervision Order

The grounds for a Supervision Order are the same as for a Care Order. When a child is the subject of a Supervision Order he/she remains at home but is supervised by a Social Worker who must give him/her support, advice and guidance.

Emergency Protection Order

This order will only be made in very urgent situations when the child's safety is immediately threatened. It allows for the child to be removed from home for up to 8 days (or not removed - if, for example the child is in hospital).

Remand, Bail and PACE (Police & Criminal Evidence Act)

Children who are subject to any of these conditions may need Local Authority accommodation. If accommodation is appropriate the Children Act requirements apply.

Relevant Regulations

It may be helpful for you to be aware of the legal Regulations which govern fostering and which have been referred to in this Handbook. They are:

- Arrangements for Placement of Children (General) Regulations 1991.
- The Fostering Services Regulations 2002.
- Contact with Children Regulations 1991.
- Review of Children's Cases Regulations 1991.
- Definition of Independent Visitors (Children) Regulations 1991.
- Representations Procedure (Children) Regulations 1991.
- Care Standards Act 2000.

If you wish to know more about the Children Act and it's Regulations, you should talk to your Fostering Supervising Social Worker.

The Children Act 1989, and associated Regulations and Guidance, introduced a major change in the way we work with the children and their families and provides the legal framework for our work.

It is important that foster carers are aware of the underlying principles and duties of The Children Act.

- Parents are the most important people in the child's life and children should be brought up in their families as far as possible.
- The Service has a duty to provide services to families to enable children to remain with them, as far as possible.
- Where the child's safety cannot be promoted or protected within their family, alternative family care may be sought.
- Foster Care is viewed as a positive alternative where children are unable to live with their parents or family.

- Whether the child is living with their parents or not, the parents retain parental responsibility for him/her.
- When a foster placement is being considered the wishes and feelings of the child, the parents, and other significant people must be sought and taken into consideration.
- Parents are positively encouraged to be part of the planning process and to be actively involved in decision making.

Any placement must give due consideration to:

- the child's religious, racial, cultural and linguistic needs.
 - the need to place the child with relatives or friends or near to the family home as possible.
- The need to place siblings together wherever possible.
 - The aim of the plan for the child should focus on returning him/her to their family, wherever possible. Where this is clearly not possible within an acceptable timescale, planning for permanency must be undertaken as a matter of priority.
 - Before any placement begins there should be a pre-placement meeting between the child, parents, foster carers and the Service to set out the terms of the placement and to put the plan in writing. When an emergency, unplanned placement is made, this meeting must be held within 72 hours.
 - There is an expectation that all the parties in the arrangement should work in partnership.