

	<h1 style="margin: 0;">CHAPTER 1</h1> <h2 style="margin: 0;">INTRODUCTION</h2>
<p>CYPA 2001 Parts 1, 2, 4 and 5 Part 3 s.27</p>	<p>1 The Children and Young Persons Act covers both private and public law relating to children. Private law concerns legal action in which all parties to it are private citizens; public law concerns legal action in which one of the parties is the State.</p> <p>2 This volume provides guidance for anyone contemplating or affected by possible court action under the Act, with the exception of the criminal courts. It deals with court action in the context of the guiding principles of the Act.</p> <p>3 The courts have considerable discretion in how they implement those principles so it important to know what they are. This is covered in this volume but a more detailed discussion of the implementation of other aspects of the Act in other volumes.</p>
<p>CYPA 2001 s.100</p>	<p>4 Education supervision orders are dealt with separately.</p>
	<h2 style="margin: 0;">HOW THE INFORMATION IS ARRANGED</h2>
<p>CYPA 2001 s.1</p>	<p>5 Chapter 1 gives an overview of court action in the context of the welfare principle.</p>
<p>CYPA 2001 Parts 1 &amp; 2</p>	<p>6 Chapter 2 is about the impact of the Act on private children's law. The courts have the power to use any order available under the Act to safeguard and promote a child's welfare, so social workers working for the Department of Health and Social Security need to be aware of the private law orders available and the circumstances in which they are likely to be used.</p>
<p>CYPA 2001 Part 4 &amp; Part 2, s.20</p>	<p>7 Chapter 3 is about care and supervision orders and the use of wardship in the High Court.</p>
<p>CYPA 2001 Part 5</p>	<p>8 Chapter 4 is about the rôle of the courts in the protection of children. It considers the framework which is intended to provide effective protection balanced by adequate safeguards against arbitrary intervention. This chapter covers the emergency protection for children available under the Act.</p>
<p>CYPA 2001 s.27</p>	<p>9 Chapter 5 is about the circumstances under which a child looked after by the Department may have his or her liberty restricted and the rôle of the courts in governing that. The wider aspects of managing secure accommodation are dealt with in detail in Volume D in this series.</p> <p>10 Chapter 6 is about the relationship between the public law and welfare principle aspects of the Act and the criminal justice aspects covered in Part 8. It covers both the responsibility of the State and the rôle of the (non-criminal) courts.</p>

<p>Guidance Volume B</p>	<p style="text-align: center;"><b>CHILDREN AND THEIR FAMILIES</b></p> <p>11 The Children &amp; Young Persons Act is built on the principle that children are generally best looked after within the family with both parents playing a full part. Hence:</p> <ol style="list-style-type: none"> <li>a. the concept of parental responsibility,</li> <li>b. an unmarried father can share parental responsibility by agreement with the mother or a order of court,</li> <li>c. the duty of Department of Health and Social Security (hereafter called "the Department") to support children and their families,</li> <li>d. the Department's duty to return a children looked after by them to the family unless this is against their interests,</li> <li>e. its duty to maintain contact between parents and children looked after whenever possible.</li> </ol> <p><b>Child-centred welfare principles</b></p>
<p>CYPA 2001 s.1</p>	<p>12 The over-riding principle of the Act is that the child's welfare is the paramount consideration. It applies to everything:</p> <ul style="list-style-type: none"> <li>• questions of upbringing,</li> <li>• administration of property,</li> <li>• care and emergency protection proceedings,</li> <li>• disputes between parents,</li> <li>• any other consideration.</li> </ul> <p>13 Delay in court proceedings is generally harmful to children and a breach of the principle. Progress of a case is therefore to be controlled by the court (rather than the parties). It will be required to draw up a timetable and reduce delay to a minimum.</p> <p>14 In order to apply the welfare principle the court needs to check the following list of factors:</p> <ol style="list-style-type: none"> <li>a. the wishes and feelings of the child (considered in the light of his or her age and understanding),</li> <li>b. his or her physical, emotional and educational needs,</li> <li>c. the likely effect of any change in circumstances,</li> <li>d. age, sex, background and any other relevant characteristics,</li> <li>e. harm sustained or risk of harm,</li> <li>f. the capacity of parents and other significant people to meet the child's needs,</li> <li>g. the range or powers available to the court under this Act.</li> </ol> <p>15 Whatever the application, in both public and private proceedings, the</p>

court may:

- make any order it thinks it is best for the child;
- instigate a local authority investigation to help it determine what is best;
- not make an order unless it is satisfied that it will contribute to the child's welfare.

16 There are two questions for the court to answer:

- a. "Is this an order necessary to promote the welfare of the child?"
- b. "Is the probable result likely to be better than leaving matters as they are - and on what evidence?"

### **Jurisdiction**

17 The majority of public law cases will be heard entirely in the Juvenile Court. Applicants in private law cases may choose which court they use. But public law proceedings may only be heard in the High Court if family proceedings are already underway there.

18 The overriding principle is that delay itself will prejudice the welfare of the child.

### **Appeals**

19 There is a general right of appeal to the High Court against a decision of the lower court in domestic proceedings but not against public law orders made under parts 4 or 5 of the Act. Appeals in care proceedings:

- a. are to the High Court,
- b. can be made against refusal to make a care or supervision order as well as against the making of one,
- c. can be made by either the local authority or parents.

20 Appeals against decisions made in the county or High Court go to the Court of Appeal.

### **Court rules**

21 The rules of court regulate proceedings. They cover inter-alia:

- a. the commencement of proceedings by application
- b. the opportunity to hold a preliminary hearing (called a directions hearing) at which
  - timetables can be set,
  - evidence can be identified which is agreed or disputed,
  - other instructions can be issued which might minimise delay and reduce conflict.
- c. The information Applicants must provide, in the form

	<p>prescribed, about:</p> <ul style="list-style-type: none"><li>i. the nature of their case,</li><li>ii. the order and directions they seek,</li><li>iii. where relevant, their future plans for the child.</li></ul>
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