

CHAPTER 3

CARE AND SUPERVISION

INTRODUCTION

Key principles of compulsory intervention

- 1 The principles are:
 - a. Compulsory intervention in the care and upbringing of a child is possible only by court order,
 - b. An order will be only be made when there appears to be no better way of safeguarding the welfare of the child,
 - c. An order will be only be made if there is evidence of "significant harm",
 - d. The grounds for making an order remain the same in all courts and all circumstances,
 - e. The views, feelings and needs of the child must be properly represented,
 - f. Under a care order the Department and the parents share parental responsibility with limits on both sides.

Establishing the need for compulsory intervention

- 2 The principles are:
 - a. the child, his parents and others with an interest must be able to participate fully in the hearing,
 - b. the proceedings must establish what action, if any, is in the child's interests,
 - c. the procedure should be as fair as possible to all concerned.

Safeguarding the welfare of the child

- 3 The Department:
 - a. has a general duty to promote the upbringing of children in need by their families,
 - b. must give paramount consideration to their welfare,
 - c. must avoid the need for court proceedings where possible.
- 4 The implication of these sometimes conflicting imperatives is that voluntary arrangements with the support of services to the child and family should always be fully explored. It is sometimes necessary to take control of a child's circumstances to promote his welfare. In that case a care or supervision order may be appropriate. In all such cases the application to the court must be carefully planned.
- 5 To establish its case the Department must bring evidence that "significant harm" has taken place or is likely to take place in the

	<p>future. It must prove this before going on to establish that an order "would be better for the child" than no order.</p> <p>6 The Department and the parents share parental responsibility. The Department can limit the exercise of parental responsibility by the parents if it seems necessary to safeguard the child's welfare. But its own actions are limited by the Act too, except in the case of an emergency. Shared parental responsibility includes a (rebuttable) presumption of reasonable contact between parents and child.</p>
<p>CYPA 2001 s.31</p> <p>CYPA 2001 Part 8 s.83</p> <p>CYPA 2001 s.31(6)</p> <p>CYPA 2001 s.12, 35 & 29</p>	<p>APPLICATIONS FOR CARE AND SUPERVISION ORDERS</p> <p>Order-making powers</p> <p>7 This section is the only route through which a child may be placed in the care or under the supervision of the Department in civil proceedings, except Education Supervision Orders.</p> <p>8 Supervision orders (but not care orders) may be made in juvenile criminal proceedings, but these differ in some respects from supervision orders made under civil law.</p> <p>9 Normally the Department applies to the juvenile court for an order. Where an application arises from a private law action as part of family proceedings the case is heard in the court where the proceedings are already taking place.</p> <p>10 The court hearing an application for a public law order may make an order under private law as an alternative to it, or in combination with a supervision order.</p>
	<p>See Chapter 2 for details about private law cases</p> <p>11 A court in any other family proceedings may also make an order directing the Department to investigate if it appears that a care or supervision order may be appropriate. The Department then has a duty to consider whether it should apply for a care or supervision order or take some other action to protect the child.</p> <p>Matters to be considered by the Department when deciding whether to apply for an order</p>
<p>CYPA 2001 s.46</p>	<p>12 Only the Department can apply for a care or supervision order, but it will do so in the light of full inter-agency co-operation. It will exchange information and invite the key stakeholders to participate in making an informed decision.</p> <p>13 The Department will always investigate with the support of the key stakeholders. A multi-disciplinary, multi-agency case conference will be held, as set out in the Manx procedure for undertaking child protection investigations. The child will be involved if he or she has sufficient understanding of what is happening. The parents and</p>

<p>CYPA 2001 s.1(4) CYPA 2001 s.31(1) CYPA 2001 s.1(5)</p>	<p>others with a legitimate interest in the child's future will also be involved wherever possible.</p> <p>14 Families should be able to participate in the decision-making process and need to be kept informed of decisions as they are made. They need to understand the reasoning behind the decisions and their likely consequences. They also need to register any objections they may have, with independent support if necessary.</p> <p>15 A decision to bring a case to court will depend on:</p> <ul style="list-style-type: none"> a. clear evidence that provision of services including a voluntary arrangement to look after the child has failed or would be likely to fail adequately to meet his or her needs, b. the absence of a suitable person prepared to apply to take over care of the child under a residence order, c. the apparent absence of a better way to safeguard the child's welfare than the exercise of statutory control by the Department. <p>16 Having identified the child's needs with the help of others, the Department will consider:</p> <ul style="list-style-type: none"> a. its own services or those provided by voluntary or private organisations, b. home-help, day care, parenting advice, befriending support, c. monitoring the child's welfare by a health visitor and social worker, d. temporary placement in suitable accommodation identified by the Department. <p>17 It will make a judgement as to whether a combination of these services would improve or relieve the situation sufficiently.</p> <p>18 The options will always be discussed with the child in language appropriate to his understanding and with the parents. Only once it is clear that there is no practical possibility of avoiding compulsory steps to safeguard the child will action proceed.</p> <p>19 The final decision will be taken, on the basis of legal advice, that the court is likely to be satisfied that:</p> <ul style="list-style-type: none"> a. the "checklist" criteria indicate an order, b. the criteria for making an order are met, c. an order should be made at all. <p>20 Other legal issues to consider are:</p> <ul style="list-style-type: none"> a. the implications of someone opposing the application and
--	---

<p>CYPA 2001 s.11(1)</p>	<p>applying for an order under Part 2 instead,</p> <ul style="list-style-type: none"> b. whether to ask the court for an interim care order or a supervision order, c. whether to ask the court for directions, d. notification and other procedural matters likely to be considered at a directions hearing, e. what to include in the Department's advance statement including plans for the child if the order is granted and witness statements, f. whether the court is likely to consider that an independent appointment to represent the interests of the child should be made, g. whether use of a residence order linked with a supervision order would be an appropriate alternative to a care order.
<p>CYPA 2001 s.31(3)</p>	<p>Conditions for a care or supervision order</p> <p><i>Age limits</i></p> <p>21 The child must be under 17 years old or under 16 if married. Marriage under 16 is not possible under Manx law, so this would only apply to a child married abroad.</p>
<p>CYPA 2001 s.38</p>	<p>22 The order ceases to have effect at 18 years old unless brought to an end earlier.</p>
<p>CYPA Section 31(2)</p>	<p><i>Primary condition</i></p> <p>23 The court must be satisfied of the existence or likelihood of significant harm attributable to:</p> <ul style="list-style-type: none"> a. either the care given to the child not being what it would be reasonable to expect a parent to give, b. or the child being beyond parental control.
<p>CYPA 2001 s.1(4)&(5)</p>	<p>24 In effect there are two criteria which both have to be satisfied. The first focuses on the <i>condition of harm</i>, the second on <i>its cause</i>.</p> <p><i>Secondary condition</i></p> <p>25 If the court is satisfied that one of the primary conditions is met, it must apply the welfare principles:</p> <ul style="list-style-type: none"> a. Is it better for the child to make an order than not to do so? b. Is an order in the child's best interest in the light of the "checklist"?

<p>CYPA 2001 s.23(6)</p>	<p>Relevant definitions</p> <p>26 <i>Harm</i> is defined here as ill-treatment <u>or</u> the impairment of health or development. These are alternatives: only one needs to be satisfied.</p> <p>27 <i>Ill-treatment</i> includes sexual abuse and non-physical ill-treatment, for example emotional abuse. It includes physical abuse by implication. It is sufficient proof of harm in itself. It is not necessary to show that impairment of health or development has followed, or is likely to follow.</p> <p>28 <i>Health</i> includes either physical or mental health or development. These are alternatives: only one needs to be satisfied.</p> <p>29 <i>Development</i> means physical, intellectual, emotional, social or behavioural development. A child who cannot control his or her serious anti-social behaviour may be included here.</p> <p>30 In each case the condition or behaviour defined must be <u>significant</u> to satisfy the criterion of the Act. Significance is demonstrated by comparison with what could be reasonably expected of a similar child. Children have a range of characteristics and disabilities so the comparison is not with "the average child" but with "a similar child".</p> <p>31 Having established an acceptable benchmark on the basis of the previous paragraph it is necessary to show a significant deficit against it. Minor shortcomings in health care or minor deficits in physical, psychological or social development will not meet the criterion.</p> <p>32 The Department may invoke the High Court's inherent jurisdiction to resolve specific issues concerning a child in its care. This power may only be invoked in exceptional circumstances, and with the leave of the court which made the order. It is separate from wardship. Examples include:</p> <ul style="list-style-type: none"> • the determination of a serious medical decision, • the sanctioning of a contested abortion, • restricting publicity, • denying a parent all contact under difficult legal circumstances. <p>Initial hearings: court requirements and party status</p> <p>33 Rules of court require the Department to serve a copy of the application for a care or supervision order on all the parties to the proceedings. The child and any person with parental responsibility</p>
--------------------------	--

<p>CYPA 2001 s.35(6)</p> <p>CYPA 2001 s.33</p>	<p>for the child will automatically be given party status. The court may also direct that others be joined to the proceedings.</p> <p>34 Grandparents and other relatives will be able to apply for party status if they have a significant interest in the future of the child.</p> <p>35 A separate application must be made for each child on the prescribed form which will show:</p> <ul style="list-style-type: none"> a. details of plans for the future care of the child, b. requests for directions, including restrictions on contact, c. the checklist referred to in Section 1(4) <p>36 At a directions appointment, which may be held at any time during the course of the proceedings, directions may be issued on any of the following matters:</p> <ul style="list-style-type: none"> a. the timetable for the proceedings and directions to ensure the timetable is adhered to, b. the identity of the parties to the proceedings, c. the submission of evidence including experts' reports, d. the date for a subsequent directions appointment or first hearing, e. the attendance of the child concerned, f. any other matters considered relevant by the court. <p>37 Usually the court will not be able to decide the application for a care order or supervision order at the first hearing. The Department will advise the court at the directions appointment:</p> <ul style="list-style-type: none"> a. whether it is applying for an interim order, b. if it is seeking any directions for medical or psychiatric examination, c. the authority's plans for safeguarding and promoting the child's welfare while the interim order is in force, d. what type of placement is envisaged, e. the proposals for allowing the child reasonable contact with his parents and others. <p><i>Timetabling</i></p> <p>38 Given the need for thorough enquiry an application for a care or</p>
--	--

CYPA 2001 s.1(2)	<p>supervision order will normally be adjourned to allow it to take place. The court and the Department must balance the need to make an informed judgment about the best interests of the child against the statutory requirement to keep delay to a minimum. It is important that any delay arises from the imperative in the Act to reach an inclusive and well-informed judgment rather than from bureaucratic convenience.</p>
CYPA 2001 s.35	<p>INTERIM ORDERS</p> <p>39 An interim order may be for care or supervision. Supervision may be linked to a short-term residence order. There are two main objectives:</p> <ul style="list-style-type: none"> • to enable the child to be suitably protected while proceedings are progressing where this is required, and • to see that interim measures operate only for as long as is necessary. <p>40 The court will be influenced by timetable considerations in deciding the duration of interim orders.</p> <p>41 An interim order can be challenged by appeal or application for discharge in the same way as a full order.</p> <p>42 The court may make an interim order when it:</p> <ul style="list-style-type: none"> • adjourns care proceedings • directs the Department to investigate a child's circumstances in family proceedings.
CYPA 2001 s.30(1)	<p>43 The court must be satisfied, whether the making of an interim order is contested or not, that there are reasonable grounds for believing that the child's circumstances fulfil the criteria for a full care or supervision order.</p> <p>44 A lower level of proof is required for an Interim Order. The "<i>reasonable grounds for believing</i>" remain to be tested while the Interim Order is in force. The grounds may be such things as:</p> <ul style="list-style-type: none"> • the child's version of events • medical or social evidence of symptoms of abuse. <p>45 A more detailed assessment may cast doubt on the original grounds. Court findings leading to the making of interim orders are therefore not binding on the court at the final hearing.</p>
CYPA 2001 s.1	<p>46 The welfare principle and the presumption against making an order are equally binding on the court considering an Interim Order as one considering a full order.</p> <p>47 Interim orders are similar to full orders except that the court:</p> <ol style="list-style-type: none"> a. determines the duration of the interim order (within the limits

<p>CYPA 2001 s.11 & 35(3)</p>	<p>described below),</p>
	<p>b. may give directions to the Department concerning medical psychiatric or other assessments.</p>
	<p>48 An interim order represents a substantial, if temporary, intervention in the care and upbringing of the child. It will only be sought as necessary protection and should not be regarded as the norm when applying for a full care or supervision order.</p>
	<p>49 An interim supervision order may be useful to achieve a particular objective, for example to ensure that the child attends his local health centre for routine health and developmental check-ups.</p>
	<p>50 An interim order may be the way to continue to protect the child after expiry of an emergency protection order while enquiries are continuing. The order itself may sometimes be sufficient protection. The Department may decide to allow the child to live with his or her family under supervision.</p>
	<p>51 The court is also able to make a private law (Section 11) order as an interim measure. But if it makes a residence order it must also make an interim supervision order unless satisfied that the child's welfare will be satisfactorily safeguarded without one.</p>
	<p>52 A residence order made in these circumstances is the same as any other:</p> <ul style="list-style-type: none"> a. The person in whose favour it is made has parental responsibility while the order is in force, b. It may contain directions or impose conditions, c. It may specify the length of time it is to remain in force, d. Other Section 11 orders may deal with parental and other contact and other things to do with the child's education and welfare.
	<p>53 If a suitable person offers to take parental responsibility, the Department will carefully weigh the rival attractions of a private law order or an interim order. The long term future of the child may sometimes appear finely balanced against his or her immediate protection and supervision.</p>
	<p>54 The court has power to give directions on medical or psychiatric examination or other assessments, but care proceedings, much less an interim order, must not be used simply to obtain an examination or assessment. If the Department's main concern is to secure an assessment in the face of parental opposition, a child assessment order should suffice.</p>
	<p>55 If the Department believes an interim order is necessary, even though the child does not need to be removed, an interim</p>

<p>CYPA 2001 s.35(4)</p>	<p>supervision order may be the better option.</p> <p>Duration of interim orders</p> <p>56 The <u>maximum</u> durations for which the court may make an interim order are as follows.</p> <ol style="list-style-type: none"> a. Initial order up to 8 weeks, b. Subsequent orders up to 4 weeks, c. If the initial order was shorter than 4 weeks the subsequent order can “top up” the time length to 8 weeks. <p>57 These limits are maxima; they should not be regarded as the norm. The court will aim to fix the shortest time during which the job may be thoroughly done. Any party may bring the matter back to the court before the due date as the need arises.</p> <p>58 Before making a subsequent interim order the court must satisfy itself that the criteria in section 35 are still met in the light of any change in circumstances or new evidence that may have come to light, or anything else that may cast doubt on the benefit of a new order.</p> <p>59 An interim order ceases to have effect once the original application has been dealt with.</p>
<p>CYPA 2001 s.35(6)</p>	<p>Directions attached to an interim order</p> <p>60 The court has power to attach directions for medical, psychiatric or other assessment to an interim order at any time it is in force. It can also prohibit any such assessment. The child too may refuse any assessment if he or she has sufficient understanding to make an informed decision. There is no appeal against these directions, but any party to the proceedings can apply to have them varied.</p>
<p>CYPA 2001 s.41 & 42</p>	<p>61 It is not necessary to invoke an interim order to obtain such directions. The court has similar powers in support of assessment orders and an emergency protection orders.</p> <p>Consent</p> <p>62 An assessment conducted with the cooperation of the parents without the need for an order or a direction is clearly in the spirit of the Act. Parental agreement must always be balanced against the need to safeguard and protect the child. A direction may be the only way to secure an assessment which is adequate to its purpose. The court will expect to be advised on these matters by officers of the Department and any independent experts it appoints.</p> <p>63 A child of 16 is presumed in law to be capable of giving or withholding consent unless there is clear contrary evidence. Younger children may also be capable of giving consent in the light of expert opinion. Court directions do not override this right. In all such cases</p>

	<p>it is the child's consent that is relevant, not that given by anyone else.</p> <p>64 For children not regarded by an expert as capable of giving consent it would normally have to be given by the parents. An interim care order vests the necessary parental responsibility in the Department, in the face of parental opposition if necessary. In other cases, for example where a specific issue arises and a private law (Section 11) order is sought, court directions can override parental refusal.</p> <p>65 The court will want to know the child's view, how well informed it is and whether he or she has been put under any pressure. When a child's first language is not English or there are other communication difficulties expert assistance will be required to meet this responsibility.</p> <p>66 Even though this has been done by the court the expert conducting the assessment must make his or her own judgement about the child's capacity and understanding. He or she must not proceed if consent is withheld. The facts must to be reported to the court as soon as possible so that it may reconsider the direction.</p>
<p>CYPA 2001 s.33(1)</p>	<p>Responsibilities during interim orders</p> <p><i>Parental contact</i></p> <p>67 An interim care order gives the same parental responsibility and control over contact to the Department as a full order for as long as it is in force.</p>
<p>CYPA 2001 s.33(2)</p>	<p>68 An interim supervision order does not confer parental responsibility on the Department. If contact is an issue, the court can only control it by means of a contact order. The court must consider the Department's proposals for contact and may invite the other parties to comment on them before it makes an order.</p>
<p>CYPA 2001 Schedule 2(5)</p>	<p><i>Review</i></p> <p>69 An interim care order includes the duty to review as for all other children looked after and in care of the Department. The requirement to consider whether to apply for revocation and to take account of the views of the child and the other parties is particularly pertinent to an interim order.</p>
	<p>REVOCATION AND VARIATION OF ORDERS</p> <p>Care orders</p> <p>70 A Care Order can only be revoked. It cannot be varied, but a supervision order can be put in its place. An application to do this can be made by the Department, by the child or by anyone with</p>

<p>CYPA 2001 s.37(2)</p>	<p>parental responsibility.</p> <p>71 The welfare principles and “checklist” which bind the Court in making the care order apply equally to revoking it. But it can substitute a supervision order without having to re-establish that the child is likely to suffer significant harm unless it does so. The previous findings of fact can be treated as accepted in the new application.</p>
<p>CYPA 2001 s.38(2)</p>	<p>72 A care order is automatically revoked by adoption, by the High Court’s appointment of a Guardian or by a residence order.</p> <p>73 The residence order can be used to give care of the child to a suitable person.</p> <p>For more detail see Chapter 2.</p>
<p>CYPA 2001 Schedule 2(5)</p>	<p>74 It is important to remember the duty to review children in care of the Department and to take account of the views of the child and the other parties when considering whether to apply for revocation of the order.</p>
<p>CYPA 2001 Schedule 4(9)</p>	<p>Supervision orders</p> <p>75 An application to revoke or vary a supervision order can be made by the supervisor, by the child, by someone with parental responsibility or, in effect, by someone with whom the child lives in so far as it affects him or her.</p> <p>76 A care order can be made where the child was subject to a supervision order but not as a substitution. All the conditions for a care order must be re-established from scratch. Those which were established when the supervision order was first made cannot be used without re-examination.</p> <p>77 The supervisor must consider an application to change the order when:</p> <ol style="list-style-type: none"> a. it has not been complied with, b. the child refuses consent to examination or treatment required by the order, c. the order appears to be necessary no longer, d. the directions given under the order or the arrangements made for carrying them out need to be varied.
<p>CYPA 2001 s.40</p>	<p>Time limits</p> <p>78 Once an application for revocation of a care order or supervision order or to substitute a supervision order for a care order has been disposed of, no further application of this kind may be made within</p>

	<p>six months without leave of the court.</p> <p>79 This time restriction does not apply to interim orders or applications to vary a supervision order.</p>
	<p>APPEALS AGAINST CARE AND SUPERVISION ORDERS</p>
CYPA 2001 s.97	<p>80 Anyone, including the Department, who has the right to apply for the revocation or variation of an order also has the right of appeal from the Juvenile Court to the High Court and from the High Court to the Staff of Government Division. The appeal can be against the making of a care or supervision order (including an interim order) or against the court's refusal to make an order.</p>
CYPA 2001 s.39	<p>81 Pending an appeal against the dismissal of an application the court can make a temporary care or supervision order until the appeal is heard. The appeal court can extend the period if necessary until the final hearing.</p> <p>82 This can only be done when an order or interim order was in force before the dismissal. The court must have received notice of intention or active consideration to appeal. Its purpose is to provide continued protection for the child or to allow continuity of care until the appeal is heard.</p> <p>83 When the court makes such an order it can include any directions it considers appropriate.</p> <p>84 The presumption against making any order applies, so the court will need to consider evidence that it is necessary to do so. An appeal will also delay the final outcome, so the court will also need to consider the general principle of reducing delay to a minimum.</p>
CYPA 2001 s.1(2)(5)	
	<p>EFFECT OF CARE ORDERS</p>
CYPA 2001 s.32	<p>85 This section describes the Department's specific rights and responsibilities for children under its care and how they relate to those of the parents.</p> <p>86 Part 4 is not the only part of the Act affecting children subject to care orders. The general welfare responsibility of course applies to these children. Sections 25 to 27 describe how the Department is to accommodate them. Children on care orders are also "looked after" by the Department so its responsibilities for that group also apply to them.</p> <p>87 The Department acquires parental responsibility for the child. Parents do not lose their parental responsibility when an order is made. But it is quite clear that the Department's responsibility to safeguard the welfare of the child gives it primacy where there is a conflict which</p>
CYPA 2001 s.1 CYPA 2001 s.24 CYPA 2001 s.25-27	
CYPA 2001 s.32(2)	

<p>CYPA 2001 s.2-3 CYPA 2001 s.2(4)</p> <p>CYPA 2001 s.32(4)</p> <p>CYPA 2001 s.32(3)&(5)</p> <p>CYPA 2001 Schedule 2(6)</p>	<p>puts that at risk.</p> <p>88 The meaning and exercise of parental responsibility are described elsewhere. Parents may not act in a way which is at odds with the court order.</p> <p>89 If the Department decides to limit the way in which parents meet their responsibility it will discuss the matter with them and incorporate the outcome in the plan for the child. The discussion will be revisited during any future review. Whatever limits are decided do not absolve or prevent the parents from doing what is reasonable to safeguard or promote the child's welfare when they have control of the situation, for example during a weekend visit.</p> <p>90 Parental rights, duties, powers and responsibilities under other legislation are not directly affected by the making of a care order.</p> <p>91 The Department can only act "to safeguard or promote the welfare of the child" and is not permitted to:</p> <ul style="list-style-type: none"> a. alter his or her religious upbringing, b. agree to or refuse an adoption order, c. appoint a guardian, d. change his or her name, e. remove him or her from the Island (with the following exceptions). <p>92 A child in care can leave the Island for a period of under a month, say for a holiday.</p> <p>93 He or she can also leave the Island for a longer period</p> <ul style="list-style-type: none"> a. With the consent of everyone with parental responsibility <p>or</p> <ul style="list-style-type: none"> b. With the leave of the juvenile court which must satisfy on these issues - <ul style="list-style-type: none"> i. it is in or her best interests ii. the arrangements are suitable iii. the child agrees iv. everyone with parental responsibility agrees.
--	---

	<p>94 The first two issues are absolute but the agreements may be dispensed with if the court concludes that:</p> <ol style="list-style-type: none"> a. the child does not have sufficient understanding to make an informed decision, b. someone with parental responsibility cannot be found or c. someone with parental responsibility is withholding consent unreasonably. <p>95 A residence order and a care order are mutually exclusive. The making of one automatically revokes the other. And the making of a care order automatically extinguishes all private law orders made under Section 11.</p>
<p>CYPA 2001 Schedule 2(1)</p>	<p style="text-align: center;">CONTACT WITH CHILDREN ON CARE ORDERS</p> <p>96 Regular contact with parents, relatives and friends will usually be an important part of the child's upbringing in his new environment irrespective of whether he or she is being looked after voluntarily or under a care order it is essential to successful rehabilitation. Lack of contact, even when otherwise justified by the circumstances, will have an enormous impact on the child's future.</p> <p>97 The Department's duty to promote and facilitate contact is reflected in the Act and it has the power to make payments in order to further it.</p> <p>98 The duty is not absolute. The overriding consideration is the welfare of the child. The Department has the right to keep the whereabouts of the child hidden from anyone whom it considers would otherwise prejudice the child's welfare.</p>
<p>CYPA 2001 s.33</p>	<p>99 The Department must normally allow reasonable contact between a child in its care and his or her parents and other significant people. The underlying principle is that the parties concerned should agree these arrangements before the care order is made.</p> <p>100 They may be unable to agree; or the Department may want to deny contact to a person who would normally be entitled to it, in the child's interests. That is a matter for the court to decide, except in an emergency. This section deals with the powers available to the court to resolve such conflicts.</p>
<p>CYPA 2001 s.33(1)</p>	<p>101 The Department must allow reasonable contact with:</p> <ol style="list-style-type: none"> a. the parents, b. a guardian, c. anyone named in a residence order in force immediately before the care order, d. anyone caring for the child by virtue of an order of the High

<p>CYPA 2001 s.40(2)</p>	<p style="text-align: center;">Court in force immediately before the care order.</p> <p>102 In the absence of specific instructions from the court the Department decides what is “reasonable” and this may vary over time in response to changing circumstances. The plan and any changes to it should be clear, specific and reasoned. It must be understood by, and if possible negotiated with, both child and parents.</p> <p>103 The court may intervene in a number of ways. It must consider the plan proposed by the Department and ask parties to comment on it before it makes a care order. Once the order is made, the following people can apply to the court for a direction about contact at any time.</p> <ul style="list-style-type: none"> a. anyone listed in paragraph 101 above, b. any other interested person with leave to apply from the court, c. the child, d. the Department <p>104 If it is satisfied that it is necessary the court can make any order and impose any conditions it considers appropriate. The conditions can cover time, intervals, supervision, review of arrangements and any other matter.</p> <p>Refusal of contact</p> <p>105 The Department can refuse contact without reference to the court for up to seven days in an emergency. It must be satisfied that it necessary to do so to safeguard the child’s welfare and of course anyone listed in paragraph 101 can apply to the court if that is done.</p> <p>106 The Department, child or person named in an order may apply at any time for an order to be varied or revoked; and any party to the proceedings can appeal against an order or a refusal to make one.</p> <p>107 The child may have other significant contacts. Occasionally the Department may consider one of them to be harmful to his or her welfare. There is no need to seek a court order in those circumstances. But the person concerned can seek the leave of the court to apply if he or she wishes. During the discussions leading up to refusal the Department will advise them of that right and the process they must follow to pursue it.</p> <p>108 Once an order has been refused, the person who applied for it cannot apply again, without the court’s leave to do so, within six months.</p>
	<p style="text-align: center;">EFFECT OF SUPERVISION ORDERS</p>

<p>CYPA 2001 s.34 CYPA 2001 Schedule 4</p> <p>CYPA 2001 Schedule 4(2)-(5)</p>	<p>Supervisors' duties</p> <p>109 A supervision order puts the child under the supervision of the Department or a probation officer. In summary the supervisor has three duties:</p> <ol style="list-style-type: none"> a. to "advise, assist and befriend" the child, b. to take reasonable steps to see that the order is carried out, c. to consider whether to apply for variation or revocation if the order: <ol style="list-style-type: none"> i. is not being complied with ii. is no longer necessary; iii. should include a requirement for, or a change of, medical treatment. <p>Additional requirements</p> <p>110 The order may impose additional requirements on the child and on those responsible for him or her:</p> <ol style="list-style-type: none"> a. The child may be required, under instruction from the supervisor, to: <ol style="list-style-type: none"> i. do what the supervisor directs, ii. live where the direction says and for how long, iii. be present where and when directed, iv. participate in specified activities, v. submit to psychiatric or medical examination or treatment (but this can only be with the informed consent of a child with sufficient understanding). b. The "responsible person" must consent to be bound by conditions included in an order. They can include: <ol style="list-style-type: none"> i. taking reasonable steps to ensure that the child acts as directed, ii. attending interviews and activities with the child, iii. advising the supervisor about a change of address.
	<p>111 Directions included in the order are in effect the "bottom line". It is for the supervisor to interpret them and to decide how strictly and rigidly they should be enforced in the particular case. He or she must always have regard to the Act's guiding principle of the child's</p>

<p>CYPA 2001 Schedule 4(4)&(5)</p>	<p>welfare in doing so.</p> <p>Medical and psychiatric examination and treatment</p> <p>112 Only the court can impose conditions about medical and psychiatric examinations and treatment. But it may leave the discretion to implement examinations (N.B. Not treatment) to the supervisor. The child must consent to these conditions if he or she is able to understand their implications. They may specify:</p> <ul style="list-style-type: none"> a. the doctor who will conduct or supervise them, b. the establishment, residential or non-residential, where they should take place. <p>113 The doctor responsible for the treatment must report to the supervisor if he or she:</p> <ul style="list-style-type: none"> a. is unwilling to continue the treatment for any reason, b. thinks that it should continue beyond the period specified, c. thinks the child needs different treatment, d. concludes that the condition is not susceptible to any treatment, e. thinks further treatment is unnecessary. <p>114 The supervisor must refer the report to the court, which may cancel or vary its requirements in that light.</p>
<p>CYPA 2001 s.34(1)(c)</p>	<p>Breaches of order</p> <p>115 There is no fixed remedy for breach of a requirement or direction. In each case the supervisor will need to consider what action to take in discussion if possible with the child, the parents and other responsible people. The available options are:</p> <ul style="list-style-type: none"> a. to handle the breach using his or her own resources, b. to apply to the court for a variation or revocation, c. to apply to the court for an emergency protection order if he or she has been prevented from visiting the child and believes he or she may be at significant risk.
<p>CYPA 2001 s.99</p>	<p>116 In the case of c) the supervisor can also apply for a search warrant to be executed by a police officer to look for the child forcibly if necessary so that he or she can be protected.</p>

CYPA 2001
Schedule 4(6)&(8)

Time limits

- 117 Supervision orders are subject to strict time limits.
- a. An initial order lasts for a year unless revoked earlier,
 - b. Directions written in to the order (to live in a specific place, to attend specific activities or to present him or herself to a specified person) cannot exceed a total of 90 days,
 - c. The initial order can be extended by the court but it and its extensions cannot exceed three years,
 - d. The order ceases when the supervised person reaches 18 years.

Supervision orders in criminal proceedings

- 118 It should be noted that the whole of the foregoing section relates only to supervision orders made under Section 34 of the Act (Part 4 - Care and Supervision). A different Section (83) and a different Schedule (9) deal specifically with supervision orders made in criminal proceedings.

WARDSHIP AND THE INHERENT JURISDICTION OF THE HIGH COURT

CYPA 2001 s.20

- 119 The inherent jurisdiction of the High Court is available as a remedy of last resort when the Department seeks the resolution of a specific issue concerning the future of a child in its care. Using wardship as an alternative to public law orders is specifically prohibited.
- 120 Wardship and a care order cannot coexist:
- a. if a ward of court is committed to care the wardship ceases to have effect,
 - b. a child in care cannot be made a ward of court .
- 121 Wardship is an exercise of the High Court's inherent jurisdiction but it is not the only possible outcome. The Department can seek leave to make an application in respect of a child in care in exceptional circumstances even though a wardship order and a care order cannot exist side by side.
- 122 Before the Department can apply for the exercise of inherent jurisdiction it must have the High Court's leave to do so. Leave will not be granted unless, in effect, there appears to be no other way to prevent significant harm from befalling the child. The presumption is that no other remedy is available to deal with the situation under the Act.
- 123 The Department has parental responsibility for a child in its care. The High Court cannot use its inherent jurisdiction to define further what that means. It cannot confer on the Department any degree of parental responsibility it does not already have.

