

Guidance for Children's Social care Staff around the use of Police Protection

This Guidance has been issued in response to concerns raised at the Inspection of Safeguarding and Looked After Children' Services (May-June 2012) about the high levels of use of Police Protection in the London Borough of Southwark. This Guidance will be accompanied by training for all social care staff.

National and Local Guidance for Social Care Staff:

National Guidance about the use of powers of Police Protection and Emergency Protection Orders are contained in 'Working Together to Protect Children' (2010) and the 'Children Act 1989 Guidance and Regulations – Volume 1 – Court Orders' (2011).

Where there is a risk to the life of a child or a likelihood of serious immediate harm, an agency with statutory child protection powers **should act quickly to secure the immediate safety of the child**. Emergency action might be necessary as soon as a referral is received or at any point in involvement with a child/ren and their family, (see Appendix 1, paragraph 18 for the range of emergency protection powers available). The need for emergency action may become apparent only over time as more is learned about the circumstances of a child or children. Neglect, as well as abuse, can result in a child suffering significant harm to the extent that urgent protective action is necessary. When considering whether emergency action is required, an agency should always consider whether action is also required to safeguard and promote the welfare of other children in the same household, the household of an alleged perpetrator or elsewhere.

Planned emergency action will normally take place following an immediate strategy discussion between the police, local authority Children's Social Care and other agencies as appropriate, (including NSPCC where involved). Where a single agency has to act immediately to protect a child, a strategy discussion should take place as soon as possible after such action to plan the next steps. Legal advice should normally be obtained before initiating legal action, in particular, when an Emergency Protection Order (EPO) is to be sought.

In some cases, it may be sufficient to secure a child's safety by a parent taking action to remove an alleged perpetrator or by the alleged perpetrator agreeing to leave the home. In other cases, it may be necessary to ensure either that the child remains in a safe place or that the child is removed to a safe place, either on a voluntary basis or by obtaining an EPO.

The police also have powers to remove a child to suitable accommodation in cases of emergency. If it is necessary to remove a child, a local authority should wherever possible – and unless a child's safety is otherwise at immediate risk – apply for an EPO. **Police powers should only be used in exceptional circumstances where there is insufficient time to seek an EPO or for reasons relating to the immediate safety of the child.**

Use of Police Powers of Protection:

The police have specific powers to protect children under Part 5 of the Children Act. Police powers should only be used in **exceptional circumstances** where there is

insufficient time to seek an Emergency Protection Order, or for reasons relating to the immediate safety of the child. The use of Police Powers is a draconian step and it has no imminent right of appeal through courts. Its use should be restricted to rare circumstances. **Under no circumstances should Children's Social Care request Police Protection unless there is an immanent risk to a child's welfare.** 'Time' in this context, should not be interpreted to mean time of the day, (i.e. late in the day, availability of magistrates etc).

Where a constable has reasonable cause to believe that a child would otherwise be likely to suffer significant harm he may remove the child to suitable accommodation and keep him there. Alternatively, the constable may take such steps as are reasonable to ensure that the child's removal from hospital, or other place in which he is being accommodated, is prevented (section 46(1)). When a constable has exercised this power, the child is held to be in police protection (section 46(2)).

While there are no powers to enter premises to search for a child under section 46, where search and entry is required other powers may be used, for example a warrant under section 48 of the Police and Criminal Evidence Act 1984, (section 17(1)(e)). No child may be kept in police protection for more than 72 hours (section 46(6)).

As soon as is practicable after taking the child into police protection, the constable concerned must ensure that the case is inquired into by the officer designated by the Chief Officer of the police area concerned – the "designated officer" (section 46(3)(e)). On completing the inquiry, the designated officer must release the child from police protection unless he considers that there is still reasonable cause to believe that the child would be likely to suffer significant harm if released, (section 46(5)).

The constable concerned, (rather than the designated officer), must also do the following (section 46(3)):

- inform the local authority within whose area the child was found of the steps that have been, and are proposed, to be taken with respect to the child and the reasons for taking them;
- give details to the local authority within whose area the child is ordinarily resident of the place at which the child is being accommodated;
- inform the child, (if he appears capable of understanding), of the steps that have been taken, the reasons for taking them and of any further steps that may be taken;
- take such steps as are reasonably practicable to ascertain the wishes and feelings of the child;
- take steps to enable the child to be moved to accommodation provided by the local authority;
- take such steps as are reasonably practicable to inform the child's parents, (and every other person who is not a parent of his, but who has parental responsibility for him, and any other person with whom the child was living immediately before being taken into police protection), of the steps that have been taken with respect to the child, the reasons for taking them and the further steps that may be taken.

The local authority where the child is ordinarily resident, (and the local authority in whose area the child was found by the police, if different), have concurrent duties to make enquiries about whether they should take any action to safeguard or promote the child's welfare (section 47(1)). One such course of action is for the local authority to ask the police to apply for an EPO (section 47(3)(c) and section 46(7)).

The designated officer has a number of additional responsibilities. He may apply, on behalf of the local authority in whose area the child is ordinarily resident, for an emergency protection order to be made in respect of the child. The EPO application may be made whether or not the authority knows of it or agrees to it being made (section 46(7) and (8)). However, the police do not have any power to apply for an EPO to be extended nor can they commence care proceedings.

Neither the constable concerned nor the designated officer acquires parental responsibility for a child who is in police protection following the exercise of section 46 powers. The designated officer must nevertheless do what is reasonable in all the circumstances to promote the child's welfare, bearing in mind that the child cannot be kept in police protection for more than 72 hours, (section 46(6) and (9)).

The designated officer must also allow the following persons to have such contact with the child as, in his opinion, is both reasonable and in the child's best interests (section 46(10):

- the child's parents;
- anyone else who has parental responsibility for the child or with whom the child was living immediately before he was taken into police protection;
- a person who has in his favour an order relating to contact with the child or any person acting on behalf of any of the above.

If the child in police protection is accommodated by the local authority for the area in which he usually lives, then the authority is required to afford such contact to these people (section 46(11)).

Local authorities and the police need to work closely together, through the Local Safeguarding Children Board and in light of the guidance '*Working Together to Safeguard Children*', to ensure that children taken into police protection are not accommodated in police stations, and that their transfer to local authority accommodation is achieved promptly and carefully, with the minimum of trauma.

If the developing circumstances of a case are so urgent that there is no time to apply for an EPO, the police may be asked by the local authority to use their powers under section 46 to take the child into police protection.

Use Of Emergency Protection Orders:

Part 5 of the Act aims to ensure that effective action can be taken to protect children within a framework of proper safeguards and reasonable opportunities for parents, (or others with parental responsibility for the child), to challenge relevant actions before a court. The measures are short-term and time-limited, and may or may not lead to further action by the local authority under Part 3 or 4 of the Act.

Local authorities, when exercising their functions under Part 5 of the Act, will also need to have particular regard to the guidance set out in '*Working Together to Safeguard Children*', (www.ecm.gov.uk/workingtogether), and the '*Framework for the Assessment of Children in Need and Their Families*'. (www.dh.gov.uk/en/Publicationsandstatistics/PublicationsPolicyAndGuidance/DH_4003256).

Proceedings under Part 5 are not classified as family proceedings for the purpose of the Act. This means that in Part 5 proceedings the court must either make or refuse to make the order applied for and cannot make any other kind of order. The only exception is the court's specific authority to make an Emergency Protection Order (EPO) instead of a Child Assessment Order under s43(4) if it considers it to be appropriate to safeguard the child through an EPO in the particular circumstances of the case.

However, when making an order under this Part, as with any other Part of the Act, the court's paramount consideration must be the child's welfare (section 1(1)). The court must also have regard to the 'no order' principle (section 1(5) of the Act and Chapter 1 of this guidance). The checklist of relevant factors, (section 1(3)) does not apply to orders made under Part 5 but applicants should bear it in mind when preparing and presenting applications, in particular in those cases where proceedings under this part are likely to be followed by other proceedings under the Act, to which the checklist does apply. Where an application for an EPO is made without notice to the parents (or others with parental responsibility, or persons with whom the child is living, as the case may be), the authority must make out a compelling case for applying for the EPO without giving the parents notice. The case must be genuinely one of emergency or other great urgency. There should be clear reasons to believe the safety of the child will be compromised if the parents are alerted to the application.

Emergency Protection Orders: sections 44, 44A, 44B, and 45

EPOs enable the child, in an emergency, to be removed from where he is or to be kept where he is if, and only if, this is necessary to provide immediate short-term protection. It should be remembered that an EPO, which has the effect of separating a child from his parents, is a "draconian" and "extremely harsh" measure, and one requiring "exceptional justification" and "extraordinarily compelling reasons". The courts have confirmed the findings of the European Court of Human Rights. The child must be in "imminent danger". The court must be satisfied that the EPO is both necessary and proportionate and that there is, "no less radical form of order available". Local authorities should obtain and consider legal advice before making an application for an EPO.

The essential features of the EPO are:

- the court must be satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm, (defined by reference to section 31) or that access to the child by a person authorised to seek access has been frustrated in circumstances where the child might be suffering significant harm;

- its duration is limited to a period of eight days, with a possible extension of up to a further seven days, a maximum of 15 days, (but no EPO should be made for any longer than is strictly necessary to protect the child);

- the child, his parents, (or others with parental responsibility), may apply to discharge the order (if they were not given notice of the hearing at which the EPO was made and/or did not attend that hearing). They may not, however, apply to discharge the EPO if they had been given notice and attended the hearing;
- the Order confers on the person in whose favour it is made, (usually the local authority), limited parental responsibility for the child;
- the child must be permitted to have reasonable contact with his parents and other significant individuals, unless the court directs otherwise;
- the court may make directions in relation to medical or psychiatric examination or other assessment of the child;
- applications may not, save in wholly exceptional circumstances, be made without notice being given to other interested parties;
- the application should name the child, but where it does not, must describe him as clearly as possible; and
- the child must be returned to the parents as soon as it is safe to do so, even if the order is still in force.

An application for an EPO is a very serious step. It should not be regarded as being an automatic response in a case of suspected child abuse or as a routine first step to initiating care proceedings. The court will require full, detailed, precise and compelling evidence that the situation is sufficiently serious to justify such an interference with family life. Nevertheless if, in the course of making enquiries under section 47 of the Act, the authority is refused access to the child or denied information as to his whereabouts, it should consider applying for an order, (either a Child Assessment Order, an EPO, a Care or a Supervision Order), unless satisfied that the child's welfare can be satisfactorily safeguarded without taking such action. A proportion of EPOs are sought in circumstances where the child is already accommodated under section 20, where an application is made to prevent the removal of the child by the parents from the accommodation provided by the local authority. In such cases, the court may apply a less severe test than in cases where the child is to be removed from the parents' direct care.

Where the need for emergency action to protect the child arises from suspected abuse, the local authority should explore the possibility of providing services to and/or accommodation for the alleged abuser as an alternative to the removal of the child (Schedule 2, paragraph 5). Such consideration should form part of the process of assessment (initial or core), identifying what steps may be necessary to protect the child. It should take place in a timely way, as it is essential that it does not hold up any emergency action that may be needed. When considering whether emergency action is required, consideration should also be given as to whether action is also required to safeguard and promote the welfare of other children in the same household (e.g. siblings), the household of an alleged perpetrator, or elsewhere.

Planned emergency action normally takes place following an immediate strategy discussion between police, the local authority and other agencies as appropriate (including the NSPCC where involved). Where a single agency has to act immediately to protect a child, a strategy discussion should take place as soon as

possible after the emergency action has been taken. The local authority should seek and consider legal advice before applying for an EPO.

Any person can apply to the court for an EPO, although in practice the vast majority of applications are likely to be made by local authorities. The applicant must notify the local authority, amongst others, of the application, whereupon the local authority's duty to make enquiries, or to cause them to be made, under section 47 comes into play.

The Emergency Protection Order (Transfer of Responsibilities) Regulations 1991, (www.Englandlegislation.hmso.gov.uk/si/si1991/Uksi_19911414_en_1.htm), allow the local authority to take over the EPO, where the EPO is granted to another party, and therefore the powers and responsibility for the child that go with it, if they consider that this course of action would be in the child's best interests. Regulation 3 sets out the matters to which the authority must have regard in coming to its decision.

The grounds for making an Emergency Protection Order: section 44

The court may make an EPO if it is satisfied that one of the grounds set out in section 44(1) are met, namely:

- (i) there is reasonable cause to believe that the child is likely to suffer significant harm if he is not removed to accommodation provided by or on behalf of the applicant, or
- (ii) if he does not remain in the place in which he is then being accommodated
- (iii) the local authority's attempts under section 47 to establish whether the child is at risk of significant harm are being frustrated by denial of access to the child; or
- (iv) in the case of an application by an authorised person, (the NSPCC), the applicant has reasonable cause to suspect the child is suffering or likely to suffer significant harm and has been making enquiries with respect to the child's welfare, and these enquiries are being frustrated by denial of access to the child.

EPO on grounds that access to the child has been frustrated:

The local authority can apply for an EPO under section 44(1)(b) if:

- it is carrying out enquiries under section 47(1)(b) (child at risk of significant harm); and,
- the enquiries are being frustrated by access to the child being unreasonably refused; and,
- it has reasonable cause to believe that access to the child is required as a matter of urgency.

Under section 44(1)(c) an application can be made on similar grounds to section 44(1)(b) but by an authorised person.

The circumstances in which the 'frustrated access' grounds justify an EPO must be distinguished from the Child Assessment Order. The local authority should apply for an EPO where access is required as a matter of urgency. If the real purpose of the authority's application is to enable the authority to assess the child i.e. there is a need for further investigation of the child's health and development but he is not considered to be in immediate danger then the child assessment order is the more appropriate route for the local authority to follow.

If the local authority's case meets the criteria set out in section 44(1)(b) (above), the court may treat this combination of factors as evidence of an emergency or the likelihood of an emergency. The court will have to decide whether the refusal of access to the child was unreasonable in the circumstances. A person seeking access must produce evidence of his authority (if asked to do so (section 44(3))), such as an appropriate local authority employee identification card. Failure to do this may make it reasonable to refuse access.

If the local authority is refused access to, or denied information about, a child's whereabouts when it is conducting enquiries under its duty in section 47(6), it should apply for an appropriate order, (e.g. a child assessment order or an EPO), unless it is satisfied that the child's welfare can be satisfactorily safeguarded without taking such a step.

If the court makes an EPO under section 44 and it considers that adequate information as to the child's whereabouts is not available to the applicant local authority, but is available to someone else, such as the person who was last known to be looking after him, it may include in the Order a provision requiring that person to disclose any information he may have about the child's whereabouts (section 48(1)). The EPO may also authorise the applicant to enter premises specified in the order to search for the child (section 48(3)) or other children (section 48(4)).

EPO on general grounds:

The other ground on which an emergency protection order may be made, (section 44(1)(a)) is more of a general purpose provision for emergency situations. The court must be satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm:

S44(1)(a) (i) there is reasonable cause to believe that the child is likely to suffer significant harm if he is not removed to accommodation provided by or on behalf of the applicant, or (ii) if he does not remain in the place in which he is then being accommodated (by implication, a safe place).

There is a clear distinction to be drawn between the significant harm test in section 44(1)(a) and the test set out in subsections (b) and (c). The former test is objective, that is, there must be reasonable cause to believe the child is at risk of significant harm. In the latter, the test is subjective and it will depend on whether the applicant has reasonable cause to believe that access to the child is required as a matter of urgency. The test in relation to significant harm looks to the future. In other words, the EPO is necessary to protect the child from the likelihood of suffering significant harm. Past or present significant harm is relevant to the extent that it indicates that the child is likely to suffer significant harm in the near future.

There are a number of additional points to be emphasised about EPOs:

- the court will wish to be satisfied that the emergency action is justified and, if so, what attempts have been made to agree alternative suitable arrangements with the parents, (e.g. provision of accommodation under Schedule 2 paragraph 5 of the Act);
- any order must be both necessary and proportionate, providing for the least interventionist solution consistent with the preservation of the child's immediate safety;
- save in wholly exceptional circumstances the application must be made on notice. If an EPO is obtained without notice then the parents must be given information about what happened at the hearing, whether or not they request it;
- the court may take account of any statement contained in any report made to the court in the course of, or in connection with, the hearing, or any evidence given during the hearing which the court believes to be relevant to the application, which might otherwise be inadmissible, for example under the court rules against hearsay evidence;
- the local authority is under a continuing duty to keep the child's case under review, to ensure that the parents and the child are not separated for longer than is necessary to secure the child's safety.

An Emergency Protection Order has three effects:

- a person who is in a position to do so must comply with any request to produce the child to the applicant;
- the order authorises removal of the child or prevents his removal from the place where he is situated; and
- gives the applicant limited parental responsibility for the child (but does not remove, but merely limits, the parents' parental responsibility).

The local authority can only do what is reasonably required to safeguard or promote the child's welfare in the exercise of his parental responsibility having regard, in particular, to the duration of the order (section 44(5)). The local authority must apply their mind very carefully to whether removal is essential. Although the court makes the decision on whether to grant the EPO, it is for the authority to decide whether to remove the child. Section 44 (10)(a) and (11) imposes a mandatory obligation on the local authority, to return the child it has removed, if it appears to the local authority that it is safe for the child to be returned.

In situations where persons looking after the child do not readily agree to hand the child over, the EPO provides a formal direction to any person who is in a position to do so to comply with any request to produce the child to the applicant (section 44(4)(a)).

If the applicant for an EPO does not know the whereabouts of a child, but that information is held by another person, the court may order that person to disclose the information when requested to do so by the applicant (section 48(1)). This provision is intended to ensure that access to the child is not frustrated by information being withheld from the applicant. The named person (or persons) will normally be a

person who has previously refused to disclose the information to the applicant and who appears to the court to be in possession of that information.

No one is excused from complying with a direction made under section 48(1) on the grounds that it may incriminate him or his spouse, and "a statement or admission made in complying shall not be admissible in evidence against either of them in proceedings for any offence other than perjury" (section 48(2)). This is intended to encourage witnesses to give evidence and provide vital information, and to avoid delay in children's cases. Failure to comply with the direction would be contempt of court and may amount to an offence under s44(15) (intentional obstruction of the EPO) punishable by a fine or imprisonment.

The Act gives the courts power to authorise an applicant to enter and search specified premises for a child who is the subject of an EPO (section 48(3)).

If the applicant believes there may be another child on the premises to be searched, who ought also to be the subject of an EPO, he should always seek an order authorising him to search for such a child as well (section 48(4)). Where the applicant cannot name the child, he should be described as clearly as possible in the order.

If a second child is found on the premises and the applicant is satisfied that there are sufficient grounds for making an EPO, the order authorising the search for the second child has effect as if it were an EPO (section 48(5)). The authorised person must report the result of the search to the court whether the child was found and, if so, what action was taken and/or is planned. The court should also be told whether the power to search for the child is being treated as an EPO. If it is, and the applicant for the EPO is not the local authority, the applicant must inform the local authority accordingly, so that the local authority can meet its duty to investigate the child's circumstances under section 47 of the Act.

It is a criminal offence intentionally to obstruct an authorised person, (e.g. a local authority social worker), exercising his powers under section 48(3) and (4). If this does occur, or is anticipated, the court can issue a warrant authorising any constable to assist the authorised person in entering and searching the named premises (section 48(9)). The authorised person may accompany the police officer if he wishes, although the court may direct otherwise (section 48(10)(b)). In practice, where it is the local authority or NSPCC who is the applicant, the social worker would normally accompany the police officer, as he will be responsible for the child when he has been removed from the premises. Any warrant which the court issues to the constable may direct that the police officer may be accompanied by a doctor or nurse (section 48(11)). The warrant will authorise the constable to use reasonable force if necessary in order to assist the applicant in the exercise of his powers to enter and search the premises for the child (section 48(9)).

In dire emergencies, the police can exercise their powers under section 17(1)(e) of the Police and Criminal Evidence Act 1984 to enter and search premises without a warrant, for the purpose of saving life and limb. Similarly, under section 24 of that Act, a constable may, without a warrant, arrest a person in order to protect a child or other vulnerable person from the person in question, i.e. anyone who is about to commit an offence, anyone who is in the act of committing an offence, anyone whom the constable has reasonable grounds for suspecting to be about to commit an offence, anyone whom he has reasonable grounds for suspecting to be committing an offence, or, if an offence has been committed or the constable has reasonable grounds for suspecting that an offence has been committed, anyone whom he has reasonable grounds to suspect of being guilty of the offence.

If an applicant gains access and finds the child is not harmed and is not likely to suffer significant harm he should not remove the child (section 44(5)). The power to remove the child would persist if the circumstances changed and the order was still in force.

When an EPO is in force and the applicant has removed the child, or prevented the child's removal from a safe place, the applicant is under a duty to return the child or, as the case may be, allow him to be removed if it appears that it is safe for the child to be returned or removed (section 44(10)). In those circumstances, he is under a duty to return the child to the care of the person from whose care the child was removed (section 44(11)(a)). If that is not reasonably practicable, the applicant must return the child to the care of his parent or to another person who has parental responsibility for him, or (subject to the court's agreement) to such other person as the applicant considers appropriate (section 44(11)(b)).

If, after the child has been returned, there is subsequently cause for concern, the applicant may exercise his powers under the EPO (if it is still in force) and remove the child once more (section 44(12)). It is an offence (section 44(15)) intentionally to obstruct any person exercising his power (under section 44(4)(b)) to remove, or to prevent the removal of a child.

Court directions:

Where the court makes an EPO it may give additional directions as to the contact the child must be allowed to have with certain persons and may be allowed to have with any other named person (section 44(6)(a)). The directions may impose conditions (section 44(8)).

Subject to specific directions, there is a general duty on the applicant under section 44(13) to allow the child reasonable contact with his parents; any person who is not a parent but has parental responsibility for him; any person with whom he was living before the order was made; any person in whose favour a contact order is in force with respect to the child (under section 8); any person who is allowed contact by virtue of an order under section 34 and anyone acting on behalf of any of these people.

The court may also give directions about medical or psychiatric examination or other assessment of the child (section 44(6)(b)). The court may also specify which types of examination or assessment should not be made (section 44(8)). In promoting the welfare of the child, the court can therefore ensure that the child is not subjected to unnecessary assessments. Where such directions are given, the child may, if he is of sufficient understanding to make an informed decision, refuse to submit to the examination or other assessment (section 44(7)).

The court may give directions regarding contact and medical or other assessments not only when the EPO is made, but also at any time while it is in force and the court may also vary those directions (section 44(9)).

The court can attach an exclusion requirement to an EPO under section 44A, where it is satisfied three conditions are met:

- where the EPO is made on the basis set out in section 44(1)(a) that there is reasonable cause to believe that if a person (referred to as the "relevant person" in section 44A) is excluded from the child's home, the child will not then be likely to

suffer significant harm, if the child is not removed from his home, or is moved from where he is (the safe place), as the case may be.

- Where the EPO is made due to enquiries being frustrated under section 44(1)(b) or those enquiries will therefore cease to be frustrated by the fulfilment of the exclusion requirement;
- that a person within the child's home is able to care for the child; and that the person able to care for the child consents to the exclusion requirement in the EPO.

The exclusion requirement can exclude the relevant person from the home, and from a designated area around the home, and a power of arrest can be attached to the exclusion. The exclusion requirement and the power of arrest can be ordered for a period of less than the duration of the EPO granted. The relevant person cannot apply for discharge of the EPO but can apply to vary the exclusion requirement (section 44B). Where the child is removed from the home the exclusion requirement ceases to have effect.

Duration of EPOs:

In the first instance an EPO may be granted for up to 8 days (section 45(1)).

The courts may extend the duration of the EPO only once (section 45(6)) and for a maximum period of up to seven days (including public holidays and Sundays) up to a maximum duration of 15 days. An application for an extension may be made on notice by a person who:

- is entitled to apply for a care order with respect to the child (section 45(4)) (i.e. only a local authority or authorised person). The court may only extend the period of the EPO if it has reasonable cause to believe that the child concerned is likely to suffer significant harm if the order is not extended (section 45(5)); and
- has parental responsibility for the child as a result of an EPO.

Appeal and discharge of EPOs:

There is no right of appeal against an EPO. The Act specifies the circumstances in which there is no right of appeal as follows: in the making of or the refusal to make an EPO; or the extension of, or refusal to extend an EPO; or the discharge of, or refusal to discharge an EPO; or the giving of, or refusal to give, directions in connection with an EPO.

The following may apply to the court for an EPO to be discharged:

- the child;
- a parent of his;
- any person who is not a parent but who has parental responsibility for him;
- any person with whom he was living immediately before the making of the EPO.

However, an application to discharge an EPO will not be allowed:

- where a person who would otherwise be entitled to apply for the EPO to be discharged was given notice and attended the hearing,
- that person, (usually a parent, but in some circumstances can be the local authority), cannot make an application to discharge the order;
- where an EPO has been extended in duration for a period not exceeding 7 days (section 45(11)). The application to extend the duration of the EPO can only be made on notice, which means there will have been an opportunity for representations to be made by all the parties at the hearing on whether or not the EPO should be extended.

Therefore, an application to discharge an EPO is limited to those who did not receive notice of the EPO and/or were not present at the hearing.

Section 45(9) of the Act provides that no application to discharge an EPO may be heard by the court for a period of 72 hours after the EPO has been made.

Generally, the courts accept that there will be circumstances, albeit rare, where it may not be desirable to involve the parents in the decision-making process by giving them notice. Local authorities must conduct a careful assessment of the impact of the proposed measure on the child and the parents and to have considered alternative measures to the removal of the child before applying for an EPO. The local authority must be able to show the court to which it applies relevant and sufficient reasons for any such application that it may make.

Local authorities' duty to make enquiries under section 47 & EPOs:

A local authority is under a duty to make enquiries into a child's welfare, or cause them to be made, in a number of circumstances. An application by the local authority for either a child assessment order or an EPO should always be preceded by an initial assessment, however brief, in accordance with '*Framework for the Assessment of Children In Need and Their Families*', together with a strategy discussion, (unless a single agency has had to act immediately to protect a child, in which case one should take place as soon as possible after such action).

The local authority should make all reasonable efforts to persuade parents to co-operate with section 47 enquiries before deciding to apply for an order. The local authority is unlikely to be able to satisfy the court that there are adequate grounds for making an order, without first being able to point to the findings of such assessments and enquiries, however limited these might be in emergency situations. Emergency action might be necessary as soon as a referral is received, or at any point in a local authority's involvement with children and families, recognising that the need for such action may become apparent only over time as more is ascertained about the circumstances of a child. Neglect, as well as abuse, can pose such a risk of significant harm to a child that urgent action may be required to protect the child.

In the case of a child who is the subject of an EPO and who is not in accommodation provided by (or on behalf of) the local authority, the local authority's enquiries should also consider whether it would be in the child's best interests (while the EPO remains in force) for him to be so accommodated (section 47(3)(b)).

In the case of a child who has been taken into police protection, the local authority should consider whether it would be in the child's best interests to ask the police to make an application for an emergency protection order (sections 47(3)(c) and 46(7)).

In making their enquiries under section 47(1), the local authority must take such steps as are reasonably practicable (unless they are satisfied that they already have sufficient information) to obtain access to the child or to ensure that access to him is obtained on their behalf by a person authorised by them for that purpose (section 47(4)). They must also, as far as reasonably practicable and consistent with the child's welfare, ascertain and give due consideration to the child's wishes and feelings regarding action to be taken with respect to him (section 47(5A)).

Where, in the course of making their enquiries, the local authority is refused access to the child concerned, or information as to his whereabouts is denied, the local authority should consider applying for a child assessment order, or an EPO, or a care order or a supervision order, unless it is satisfied that the child's welfare can be satisfactorily safeguarded without such an application (section 47(6)).