

## Social Worker Guidance on Section 20 Accommodation and Private Arrangements

*NB: This document is intended to be an aide memoire when working with families to arrange accommodation for children which may be section 20 / private arrangement / private fostering. It does not cover all aspects of the law in this area and is not intended to be a replacement for attending training, reading detailed guidance notes or seeking management supervision and/or legal advice.*

### Section 20 / Private Arrangement

Firstly consider:-

- Is/was the LA involved at the point of children going to live with family/friend carers or were the children with these carers before the LA becoming aware of the arrangement?

If the LA **was not** aware or involved at that time, it is a private arrangement, even if the child(ren) have only been living with the carers for a short time. There is no requirement for section 20 consent to be obtained in respect of this kind of arrangement even if the LA subsequently becomes involved.

If the LA **is / was** involved at the time, then you need to consider the following:-

- Is the child physically present within the local authority area?
- Has the **duty** to accommodate the child(ren) arisen under one of the grounds within s20? ie:-
  - Does the child appear to you to **require** accommodation as a result of:-
    1. There being no-one with PR for him/her;
    2. Being lost or abandoned;
    3. The person who had been caring for him/her being **prevented** from doing so, whether or not permanently and for any reason.
- If none of those three criteria apply, then you will be exercising the **discretion** to provide accommodation under s20. Are you **choosing / offering** to accommodate the child(ren) because to do so would safeguard or promote their welfare?

If the circumstances fall within the duty or the discretion, then the placement **will be** under section 20 **unless** a person with parental responsibility objects and requests that the placement be a private arrangement instead. Full and frank discussions **must** take place with both the parents / those with PR and the proposed family carers in order to make them aware of the important differences between a private arrangement and a placement under section 20 in order that they can properly consider whether they wish to object .

### Important aspects of private arrangements

- Aside from a basic welfare check, no formal assessment of the carer(s) is required (*although see later section on private fostering*);
- Any financial or practical support is at the discretion of the local authority under section 17 - the carers must first look to the parents for this support;
- The child(ren) will not be 'looked after' and so none of those statutory provisions apply;
- The local authority still does not share PR;
- The arrangement is still voluntary.

### Important aspects of Section 20 placements

- A detailed assessment of the carer(s), initially under Regulation 24, will be required;
- Financial and practical support must be provided to the carer(s) by the local authority
- The child(ren) will be 'looked after' and will be subject to all the statutory visits, meetings and check / enquiries that go with that status;
- Being 'looked after' may result in future support – eg: leaving care; SGO support;
- The local authority does not share PR and must work in cooperation with the parents;
- The arrangement is voluntary and the parents can withdraw their consent and/or remove the children from the placement at any time.

Where, having considered the options, a parent objects to a placement under section 20 and a private arrangement arises, both parent(s) and carer(s) should sign the agreement letters. Templates are available and a copy should be given to parent(s) and carer(s) and kept on the SW record.

### **Section 20 consent**

Are you 'stepping into the breach' where the child has no-one to care for them without local authority intervention? If so, you are likely to be fulfilling your **duty** to accommodate and active consent may not be required. However, parents should be informed of their rights under section 20 at the earliest opportunity.

Otherwise:-

- Consent to accommodation should be 'real and voluntary'; not the result of pressure or threats;
- A parent must have capacity to provide consent – ie:- to understand the effect, both positive and negative, or what they are agreeing to. Seek advice if you are unsure and consider the issue carefully where parents have learning needs or mental health challenges, parents who are under the influence of substances, if you are dealing with a mother who has just given birth or with parents for whom English is not their first language.
- All persons with PR need to be asked for consent – even if one consents, the other(s) still need to be consulted as any objection could override the consent.
- Parents should be informed of their rights under section 20, in particular:-
  - To withdraw their consent at any time;
  - To be told where their child is;
  - To remove the child from the placement at any time.
- Parents must also be advised of the local authority's rights and responsibilities, in particular:-
  - The local authority does not share PR under section 20;
  - However, the child is 'looked after' and the local authority therefore has numerous duties to that child which it must comply with.
- As the LA does not share PR, you cannot **impose restrictions** on the parents' involvement with their children, including regarding contact. Advice can be given to parents / carers as to how they can work together to keep the children safe but any such arrangements are voluntary.

If the above guidance is not followed, the arrangement is likely to be considered an abuse of section 20 and could give rise to criticism from the court and potential claims for damages under the HRA.

The parents' agreement to accommodation under section 20 should be recorded in a written agreement. A template is available. A copy should be given to parent(s) and kept on the SW record.

There is no time limit on section 20 but you must ensure the arrangement is reviewed regularly and that all statutory duties to the child are being met. If it is proposed that section 20 is used as a framework for long-term accommodation, speak to your manager about next steps.

### **Private Fostering**

Where the conclusion is that the placement is a private arrangement, you **must** check:-

- Is the carer a '**relative**' as defined by s105 Children Act 1989? ie:-
  - grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership) or step-parent;

If not, and the arrangement is intended to last or has already lasted for 28 days or more, it will be a private fostering arrangement.

Where a private fostering arrangement exists or is proposed, duties arise to the local authority to visit the placement and satisfy itself of the welfare of the children within that placement.