LAY MAGISTRATES'

EMERGENCY PROTECTION

ORDER PACK

INDEX

		PAGE
1.	Checklist	2
2.	ARRANGEMENTS FOR EMERGENCY APPLICATIONS	5
3.	CONDUCTING EX PARTE PROCEEDINGS – an overview	7
4.	ORDER BOOK	9
5.	GUIDANCE AS TO PREPARATION OF THE JUSTICES' FINDINGS AND REASONS – A paper by the Honourable Mr Justice Cazalet	11
6.	MORE SPECIFIC GUIDELINES IN SETTING OUT REASONS AND FINDINGS OF FACT - A paper by the Honourable Mr Justice Cazalet	13
7.	THE FORMS	15
8.	ARTICLE 63 - EMERGENCY PROTECTION ORDERS	27
9.	ARTICLE 67 - POWERS TO ASSIST IN DISCOVERY OF CHILDREN WHO MAY BE IN NEED OF EMERGENCY PROTECTION	34
10.	ARTICLE 69 – RECOVERY OF ABDUCTED CHILDREN	36
11.	OATHS AND OATH TAKING – ADVISORY PAPER Judicial Studies Board December 1992	38

EX PARTE EMERGENCY ORDERS, ARTICLE 18, A CHECK LIST

You have decided to grant leave for an ex parte EPO hearing after a call from the duty clerk, bearing in mind the seriousness and urgency of the case, and whether it should be an ex or inter party hearing. Here is a simple checklist to help you through the early days of the Order when much is unfamiliar to you.

1. From your emergency pack extract the following:

   (a) Form C19 RECORD OF EX PARTE HEARING BEFORE A LAY MAGISTRATE.

   (b) Form C20 EMERGENCY PROTECTION ORDER. Two copies. If you have to issue a warrant under Article 67(9) you need three copies of form C22. Any other additional orders will require two copies of forms C24 or C26. A copy of form C41 will be required to record your decision to appoint or to refuse to appoint a guardian ad litem.

   (c) The Bible.

   (d) Pages 53-58 in the Lay Magistrates' Manual will give you a quick point of reference.

   (e) A pen and some rough paper may be helpful.

2. The applicant (social worker?) arrives. Establish whether he/she has any written reports or documents and read these.

3. In form C19 you must fill in:

   (a) The date.

   (b) The time of the hearing.

   (c) The county court division.

   (d) Sections A and B.

If you need some guidance turn to Section 3 of your EPO file. You may need to seek some further details from the applicant to assist you in completing the relevant parts of form C19.

4. Ask the applicant for formal proof of identity and that he/she is entitled to bring proceedings, if they are bringing them on behalf of a Trust or Authorised person (NSPCC). If satisfied administer the oath or affirmation.

5. Now listen to the oral evidence and ask such questions, as you may feel necessary. Make a note of any evidence given, in section F of form C19.

6. You must now consider the evidence which has been placed before you, taking particular notice of the facts, and make your decision. Consider the "No Order" principle.

Remember

a) The burden of proof is "reasonable cause to believe".

b) The welfare of the child is paramount.

c) The welfare checklist does not apply.

You must now complete sections C and D of form C19.

7. With sections C and D completed, signed and dated you now announce your decision, including any directions you may feel are necessary. This may now lead you to consider making additional orders under articles 67 (1) (3) (4) or (9) as the first effect of the EPO is that the child must be produced to the applicant who now has parental authority for the duration of the order (see paragraph 8 below). You must indicate whether the child is to be removed to accommodation provided by the applicant or prevented from being removed from any hospital or other place where he/she is being accommodated immediately before the EPO. You must also specify for how long the order is being granted (**maximum 8 days**). You may give directions to include the contact which is to be allowed or forbidden between the child and any named individual, and finally whether the child is to have any medical or psychiatric examination or assessment. With regard to physical injury you may feel that the injury can be dealt with by the child's GP but if the injury is more serious or if sexual abuse is suspected then you should direct the child to the duty consultant paediatrician at your nearest hospital. The applicant can contact the hospital to arrange this. Joint protocols exist between the paediatricians and the police to cover these cases. The child may be accompanied by his/her own doctor or a nurse or health visitor. You may wish to remind the applicant that a child who is of sufficient understanding may refuse to submit to any examination or other assessments.

8. You may need to consider giving authority to search for another child on the premises or a warrant for a police officer to accompany the applicant to gain entry to premises where they are likely to be refused. There is an additional order available under Article 69 where a child is already the subject of an EPO or a Care Order and has been removed from the place of safety and a police officer would need to enter premises and search for the child.

9. You should consider whether or not to appoint a guardian ad litem – under Article 60 of the Children (NI) Order 1995, the court is required to appoint a guardian ad litem unless satisfied that it is not necessary to do so to safeguard the interests of the child. Your decision whether to appoint or refusing to appoint a guardian ad litem should be noted in form C41.

10. Fill in section E of the order book, making sure that you include all the orders made, the directions given and the exact time of the making of the order. Sign and date again.

11. Prepare the forms (C20). See Section 7 in the EPO pack. They must be prepared in duplicate and the original given to the applicant. The other copy is kept with the Order Book (C19) and endorsed with the time the order was handed to the applicant and his/her name.

12. It might be appropriate here to remind the applicant to file a copy of the application in form C1 etc., and to serve a copy of the application and any order on other parties under the terms of rule 5(2) of the Magistrates' Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996.

13. Next day deliver the Order Book (C19) and copies of the Orders to your local court by 10.00 am if the order was made before 12.00 midnight or 12.00 noon if made after midnight. This is to allow for the expedient appointment of a guardian ad litem if ordered and for any application to revoke the emergency protection order to be heard as soon as is reasonably practicable during the petty sessions held that day. Should it be impossible for you to do this contact the clerk and give your decision verbally and make appropriate arrangements for their delivery or collection.

Deirdre Dorman

January 1997*

*The original of this foreword was written by Deirdre Dorman. It has since been revised by the Judicial Studies Board office in November 2004 and June 2008.

Return to index

Arrangements for emergency applications

The following guidance has been given to administrative staff as regards the arrangements for the conduct of "out of hours" courts to hear applications under Articles 63, 67 & 69 of the Children (Northern Ireland) Order 1995 and presided over by a Lay Magistrate discharging the functions of a court of summary jurisdiction.

These arrangements can be summarised as follows:

(i) Where a party wishes to make an ex parte application for an order under Articles 63, 67 or 69 of the Order a Lay Magistrate living nearest to where the child is will be contacted by a duty clerk who will ascertain whether or not you will grant leave to bring the proceedings.

(ii) The duty clerk will relay relevant information regarding the application to enable you to make your determination.

(iii) Where leave is granted the duty clerk will instruct the party making the application as to the location of your home and direct him to go there to make the application for the appropriate order unless you direct that this is not appropriate in which case the duty clerk will make alternative arrangements for the hearing.

(iv) The duty clerk will **not** be present at the hearing but will remain available (on mobile phone) to deal with any queries arising before, during or subsequent to the proceedings.

(v) It will be the duty of the Lay Magistrate presiding to complete and issue all appropriate forms. Guidance on these matters is contained in later sections of this guidance.

Transmission of completed order book etc to Clerk of Petty Sessions

Where a Lay Magistrate hears an application in his or her own home the completed order book page and copies of all forms issued to give effect to court orders **must** be returned to the Clerk of Petty Sessions at appropriate Family Proceedings Court as follows:

(a) Where the application is heard prior to midnight the papers must be delivered personally by 10.00 am on the day following.

(b) Where the application is heard after midnight the papers must be delivered personally by 12 noon the same day.

These deadlines have been set to allow for the expedient appointment of a guardian ad litem if ordered and for any application to revoke the emergency protection order to be heard as soon as is reasonably practicable during the petty sessions held that day.

Return to Index

CONDUCTING EX PARTE PROCEEDINGS

References to Rules are to the Magistrates' Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996. References to forms are as contained in those Rules.

"Ex parte" means on one side only. A proceeding is said to be **ex parte** when no notice of the same is or is required to be given by law to any other party who may be affected by that decision.

"Inter partes" means between parties.

Proceedings which may be conducted ex parte with the leave of the court by a Lay Magistrate discharging the functions of a court of summary jurisdiction.

Application type (Rule 5)	**Constitution of Court (Rule 2(5)(a))**
An Article 63 Order (emergency protection order)	District Judge (Magistrates' Courts) or Lay Magistrate sitting alone
An order or warrant under Article 67 (to assist in discovery of children)	District Judge (Magistrates' Courts) or Lay Magistrate sitting alone
A recovery order under Article 69 (Recovery of abducted children)	District Judge (Magistrates' Courts) or Lay Magistrate sitting alone

During Office hours hearings

Hearings for applications for leave etc will be conducted in an appropriate courthouse and the District Judge (Magistrates' Courts) or Lay Magistrate will be attended by a court clerk.

Outside Office hours hearings

See Section 2 - Arrangements for Emergency Applications

In court

While no particular rules are prescribed to govern procedures regarding ex parte applications proceedings should be conducted in accordance with the provisions of Rule 21 in so far as is possible given the **ex parte** nature of the application.

As regards the conduct of the hearing the following points should be noted:

(a) The Lay Magistrate should consider any documents filed **prior** to commencing the hearing (Rule 21(1)).

(b) On the grant of leave, the hearing **may** be conducted **orally** (Rule 5(2)). Hearsay evidence may be given (The Children (Admissibility of Hearsay Evidence) Order (NI) 1996).

(c) Evidence must be given on the appropriate oath.

(d) As a precursor to hearing any evidence the Lay Magistrate should establish (on oath) that the applicant is entitled to bring the proceedings and in the case of an Authority representative seek formal proof of his or her status.

(e) A note of the evidence should be taken on Section F of the Order Book (See Section 4 - Order Book).

(f) Before making or refusing an order **the magistrate** must complete Sections C & D of the order book page (Rule 21(4(b)) recording (in writing) any findings of fact and the reasons for making the order. See attached guidance (prepared by the Honourable Mr Justice Cazalet) as to the preparation of written findings and reasons.

(g) When announcing the decision (either making or refusing the order) the Lay Magistrate must state reasons for making order and any findings of fact (Rule 21(5)).

NB **The application can only be withdrawn with the leave of the court. *(See Rule 6 as to circumstances regarding withdrawal – such an order can only be made by a District Judge (Magistrates' Court).***

Return to Index

County Court Division

Insert County Court Division for which you are acting.

The County Court Divisions are as follows:

Antrim

Ards

Armagh & South Down

Belfast

Craigavon

Fermanagh and Tyrone

Londonderry

Section A – Parties

These sections replicate the entry stage of the application and should be completed prior to court hearings.

The applicant should provide you with the required information.

Applicant

Insert the full names and address of the applicant or the name of the "Authority" as appropriate.

Respondents/Represented by

Given the "ex parte" nature of the proceedings it is not anticipated that respondents will be present at the hearing. However, where practicable and at a minimum the names and addresses of the parents of the child should be noted.

Similarly, if a legal representative should appear details of his name, instructing solicitor (if Counsel) and his firm should be noted against the appropriate party.

Name of children etc.

Full names of children, their addresses and dates of birth should be noted together with any legal representation (if appropriate). Where the child's name is unknown an adequate description should be inserted together with a photograph of the child if available.

Transmission of completed order book etc to Clerk of Petty Sessions

Where a Lay Magistrate hears an application in his or her own home the completed order book page and copies of all forms issued to give effect to court orders **must** be returned to the Clerk of Petty Sessions at appropriate Family Proceedings Court as follows:

(a) Where the application is heard prior to midnight the papers must be delivered personally by 10.00 am on the day following.

(b) Where the application is heard after midnight the papers must be delivered personally by 12 noon the same day.

These deadlines have been set to allow for the expedient appointment of a guardian ad litem if ordered and for any application to revoke the emergency protection order to be heard as soon as is reasonably practicable during the petty sessions held that day.

Section F – Note of evidence

This section is provided to permit you to record any notes of the evidence you may wish to take. Essentially it is to permit those hearing subsequent applications in respect of any child to be fully appraised of the case history.

Return to Index

GUIDANCE AS TO PREPARATION OF THE JUSTICES' WRITTEN FINDINGS AND REASONS – THE HONOURABLE MR JUSTICE CAZALET

GENERAL

1. The obligations placed upon justices and their clerks are set out succinctly in Rules 21 (5) and (6) of the Family Proceedings Courts (Children Act) Rules 1991. Stated summarily these require that before the court makes an order or refuses an application or request, the justice's clerk shall record in writing, in consultation with the justices, the reason for the court's decision and any finding of fact. Furthermore, when justices make an order or refuse an application, the court, or one of the justices constituting the court by which the decision is made, shall state any finding of fact or reasons for the court's decision. These provisions are straightforward and are expressed in terminology which is unequivocal. They must be interpreted literally and strictly.

2. The justices and their clerks must ensure that the reasons and findings of fact are stated at the time the order is made. They cannot be added to subsequently. The written reasons and findings of fact must accord with what is stated in court. Justices cannot make an order and then reserve judgement (a luxury which the Court of Appeal is permitted). Justices must give their reasons, and any findings made, each time they make an order or decline to make an order.

3. There can be no "back door" process. That is to say that if, on appeal, a point is taken which the justices did consider in their deliberations but omitted to put in their reasons, they cannot formally make a subsequent addendum to those reasons and supply them to the appeal court.

4. Even when the parties are agreed, there is, none the less, an overriding duty in the court to investigate the proposals advanced by the parties. However, the extent of the investigation must reflect reality and so, when an agreed order is sought, the investigation of the evidence need not and should not be dealt with in full detail unless there are concerns as to the propriety of the order. Nevertheless, it is particularly important that in cases where a care order is made by consent the basis upon which the care order is made is clearly stated, for example, because of a failure to protect from an abusive spouse or an agreed non-accidental injury as set out in some statement identified in the proceedings. If this step is taken it will avoid a long and perhaps inconclusive later trawl through the evidence in the earlier case in an attempt to establish what the actual finding then was and its relevance to a different child or new family situation. Also, justices must bear in mind that it will always be important for the child's wishes (given that the child is of sufficient age and maturity for those wishes to be relevant) to be taken into consideration. A consent order sought by the parents may not always properly reflect this.

5. The Children Act has brought two fundamental changers in the way that justices conduct hearings. First they must read all the papers before coming to court (that is to say they must come into court “hot”); second they must give their reasons and findings of fact in writing. It is essential that justices are fully conversant with the written documents before the case starts. This will have one advantage in particular. The justices will know when to intervene to stop evidence being led which simply repeats what has already been stated, usually in a statement of evidence in chief. This unnecessary repetition can be extremely time wasting.

6. It is vital to remember that the findings of fact and reasons will form the basis of any appeal; accordingly they must be clearly stated. In order to avoid pressure of time when reasons are being prepared it may be appropriate to release the parties for a period or to require them to come back the next day. In this event only one of the justices concerned need attend and read out the written reasons and findings.

7. Clarity in findings and reasons is important not only so that the appeal court knows the basis on which the decision has been made but also so that the losing party knows why the decision has gone against him. It is worth remembering that decisions in family cases, unlike most other decisions in the courts, concern the future. If the losing party leaves court without understanding properly why the order has been made against him because the court has not clearly explained the reason for its decision then this will not auger well for later hearings and may well give rise to a sense of grievance which impedes the working of the order.

Return to Index

MORE SPECIFIC GUIDELINES IN SETTING OUT REASONS AND FINDINGS OF FACT

There are a number of different proformas used by different justices for the purposes of setting out their reasons and findings of fact. Once a particular system which works satisfactorily has evolved then it would be a mistake to interfere with it in any fundamental way. I accordingly set out below some guidelines which may be of assistance in formulating reasons and findings.

1 At the start state brief details about the child, parents and any other party (this included dealing with the family, siblings and where the child makes her/her home etc).

2 State, in concise form, the competing applications (i.e. the orders which each party is seeking).

3 State the relevant facts not in dispute, including appropriate background details (this will include stating physical injuries, emotional or educational problems from which the chid may have suffered and which are not in dispute. This will not deal with the cause of such injuries unless that also is not in dispute). Keep this short.

4 Set out in general form the facts in dispute (for example the cause of a non-accidental injury). This will normally involve a short statement of the competing assertions by the parties concerned.

5 State your findings of fact including in particular, where appropriate, whose evidence was preferred. In general terms you should state the reasons for preferring one witness to another (for example because he or she was more convincing, because there was corroboration, or because one witness clearly had a better recollection then another and so forth). Be careful before you call a witness a liar. We are not infallible!

6 An appellate court cannot write into justices' reasons inferences and findings working backwards from their conclusions. The material findings of fact must be stated; so be as firm as you feel you can be when stating your findings.

7 State concisely any relevant law, and refer to the threshold criteria. Refer to any relevant passage of legal authority cited.

8 State your conclusions from the facts found. In particular, if you are dealing with a care case you should state why you consider the threshold criteria to apply.

9 State your decision and reasons for it, making clear that you have taken into account the welfare checklist by going through the relevant provisions.

CONCLUSION

The sequence state above is the one that I usually follow. It matters not if you vary it somewhat or if your proforma follows a somewhat different sequence. The importance is that you should deal with all those particular headings.

The clerk is under a legal duty to record your findings and reasons in consultation with you. Once you have completed your deliberations you should call in the clerk and go through the record of your findings of fact and reasons. On the back of the proforma your clerk will enter the details of all the documentary evidence which was considered by the court.

Provided you follow these various heads you should cover all essential matters. The important thing is to get a system; a sequence of headings under which you deal with the evidence and any submissions made by the advocates which lead on to your decision. Once you have learned to work within a particular framework, the preparation of the written findings and reasons will come much more easily.

Return to Index

The Forms

The attached forms have been annotated to assist with their completion immediately following a Court hearing.

Further supplies can be obtained from Clerks of Petty Sessions detailed below:-

County Court Division of Antrim

The Clerk of Petty Sessions
The Courthouse
30 Castle Way
Antrim
BT45 5DG

028 9446 2661

County Court Division of Ards

The Clerk of Petty Sessions
The Courthouse
Regent Street
Newtownards
BT23 4LP

028 9181 4343

County Court Division of Armagh and South Down

The Clerk of Petty Sessions
The Courthouse
The Mall
Armagh
BT61 9DJ

028 3752 2816

County Court Division of Belfast

The Clerk of Petty Sessions
Belfast Combined Courts
The Family & Domestic Proceedings Office
Old Townhall Building
80 Victoria Street
Belfast
BT1 3FA

028 9072 4519

County Court Division of Craigavon

The Clerk of Petty Sessions
The Courthouse
Central Way
Craigavon
BT64 1AP

028 3834 1324

County Court Division of Fermanagh & Tyrone

The Clerk of Petty Sessions
The Courthouse
High Street
Omagh
BT78 1UD

028 8224 2056

County Court Division of Londonderry

The Clerk of Petty Sessions
The Courthouse
Bishop Street
Londonderry
BT48 6PQ

028 7136 3448

THE CHILDREN (NORTHERN IRELAND) ORDER 1995

Form C19 (EXLP)

RECORD OF EX PARTE HEARING BEFORE A LAY MAGISTRATE **File No:** _____

ORDER BOOK (Magistrates' Courts Rules (Northern Ireland) 1984)

Date of Hearing		**Time hearing commenced**		**Before a Family Proceedings Court for the County Court Division of**

Section A

Party	***Name of Party***	***✓ if present***	***Child's DOB***	***Represented by***
Applicant				
Respondent(s)				
Full names of children				

Section B: Application Details

Application for leave to bring proceedings under Article(s) [63] [67] [69] of the Children (Northern Ireland) Order 1995.

Application for an order under Article(s) [63] [67] [69] of the Children (Northern Ireland) Order 1995.

Section C: Record of proceedings/appearances etc.

Witnesses	The Court read the [reports] [statements] of:-

Section D: Findings of Fact/Reasons for decision

The Court made the following findings of fact:-

Lay Magistrate:
Dated:

The Court made this order for the following reasons:-

Lay Magistrate:
Dated:

Section E: Order Book – Order

THE CHILDREN (NORTHERN IRELAND) ORDER 1995 Form C18 (EXLP)
Magistrates' Courts Rules (Northern Ireland) 1984

Full name(s) of child(ren) & date(s) of birth:-

Application for leave to make ex parte application [granted] [refused].

*The Court granted leave for the application to be heard ex parte for the following reasons: - {here state the reasons why you consider it was appropriate to hear the application ex parte, *i.e.* without the parents being either present or represented and without the input of a Guardian ad Litem}

This order was made at **on**

Lay Magistrate:
Dated:

*** Delete if appropriate**

Section F: Note of evidence

Applicant:

Full name(s) of child(ren) and date(s) of birth:-

Lay Magistrate:
Dated:

File No:

THE CHILDREN (NORTHERN IRELAND) ORDER 1995
Article 63

Emergency Protection Order

Family Proceedings Court at

Applicant

County Court Division of

Respondent

WARNING
It is an offence intentionally to obstruct any person exercising the power under Article 63(4)(b) Children (Northern Ireland) Order 1995 to remove, or prevent the removal, of a child - (Article 63(15) Children (Northern Ireland) Order 1995)

Child(ren)

Full names of child	Boy or girl	Date of Birth

Description of children: (**Complete only where names etc. of children are not known)

ORDER:
The Court grants an Emergency Protection Order to the applicant.
This Order gives the applicant parental responsibility for the said child[ren].
This Order authorises the applicant:
[to remove the said child[ren] to accommodation provided by or on behalf of the applicant.]
[to prevent the child[ren] being removed from]
This Order operates as a direction to any person who is in a position to do so, to comply with any request to produce the said child[ren] to the applicant.]
The Court directs that
This Order has [not] been made Ex Parte
This Order ends on at [am/pm]
Ordered by , [District Judge (Magistrates' Courts/Lay Magistrate]
on at [am/pm]

Signed_____
(Lay Magistrate)
Dated Form C20

Notes about the Emergency Protection Order

About this Order.

This is an Emergency Protection Order.

This Order states what has been authorised in respect of the child[ren] and when the Order will end.

The Court can extend this Order for up to 7 days but it can only do this once.

Warning.
If you are shown this Order, you **MUST** comply with it. If you do not, you may commit an offence.

READ THE ORDER NOW.

What you may do.

You may apply to the Court
- to change the directions
- ***or***
- to end the Order.

If you would like to ask the Court to change the directions, or end the Order, you must fill in a form. You can obtain the form from a Court office.

If the Court has directed that the child[ren] should have a medical, psychiatric or another kind of examination, you may ask the Court to allow a doctor of your choice to be at the examination.

What you should do.

Go to a solicitor as soon as you can.

Some solicitors specialise in Court proceedings, which involve children. You can obtain the address of a solicitor or an advice agency from the Yellow Pages or the Law Society.

A solicitor or an advice agency will be able to tell you whether you may be eligible for legal aid.

File No:

THE CHILDREN (NORTHERN IRELAND) ORDER 1995
(Article 67(9))
Warrant To assist a person authorised by an Emergency Protection Order

Family Proceedings Court at

Applicant

County Court Division of

Respondent

To all Police Constables

The Court was satisfied that , who is the applicant, has been prevented, or is likely to be prevented from exercising powers under an Emergency Protection Order by being refused entry to the named premises or access to the child concerned.

The Court authorises you to assist the applicant to exercise powers under an Emergency Protection Order made on
You may use reasonable force if necessary.
You may assist the applicant to gain access to the following child(ren):

Full names of child	**Boy or girl**	**Date of Birth**

Description of child(ren):

You may assist the applicant to gain entry to the premises known as

The Court directs that:
[you should not be accompanied by the person who applied for the warrant]
[you may, if you wish, be accompanied by a registered medical practitioner or a registered nurse or a registered health visitor]

You should execute this warrant in accordance with the orders and directions contained in the Emergency Protection Order.

This warrant has [not] been made Ex-Parte.

Ordered by on at [am/pm]

This warrant ends on at [am/pm]

Signed_____
(Lay Magistrate)
(Clerk of Petty Sessions)

Dated:

Form C22

File No:

THE CHILDREN (NORTHERN IRELAND) ORDER 1995
(Article 67(4))

Authority to search for another child

Family Proceedings Court at

Applicant

County Court Division of

Respondent

Child(ren)

Full names of child	Boy or girl	Date of Birth

Description of child(ren)

The Court was satisfied that
[an Order had been granted on to the applicant for the emergency protection of the said child (ren), and that the Order had authorised the applicant to enter these premises].

[there was reasonable cause to believe that the child (ren) named in this Order may be on those premises and that an Emergency Protection Order ought to be made in respect of [that/those] child(ren)].

The Court authorises , who is the applicant to enter the premises, *known as* and search for the child(ren).

WARNING - It is an offence intentionally to obstruct the applicant from entering or searching the premises specified above - (Article 67(4) and (7) Children (Northern Ireland) Order 1989).

This Order has [not] been made Ex Parte.

This Order ends on at (am)(pm)

This Order was made for the following reasons:

Ordered by on at [am/pm]

Signed_____
(Lay Magistrate)
(Clerk of Petty Sessions) Form C24

File No:

THE CHILDREN (NORTHERN IRELAND) ORDER 1995
(Article 69)

ORDER FOR RECOVERY OF A CHILD

Family Proceedings Court at

Applicant

County Court Division of

Respondent

Child(ren)

Full names of child	Boy or girl	Date of Birth

Description of child(ren):

THE COURT IS SATISFIED THAT

1) has parental responsibility for the said child[ren] by virtue of a Care Order (Emergency Protection Order) made on .

2) the said child[ren] is [are] in police protection and the designated officer is .

THIS ORDER AUTHORISES

1) to remove the said child[ren]

2) a Police Constable to enter the premises, known as and search for the said child[ren], using reasonable force if necessary.

WARNING: IT IS AN OFFENCE INTENTIONALLY TO OBSTRUCT THE PERSON FROM REMOVING THE CHILD (ARTICLE 69(9)) CHILDREN (NORTHERN IRELAND) ORDER 1995)

THIS ORDER REQUIRES any person who has information about where the said child[ren] is[are], or may be, to give that information to a Police Constable or an Officer of the Court, if asked to do so.

THIS ORDER DIRECTS any person who can produce the said child[ren] when asked to by a police constable to do so.

This order has been made ex parte.

Signed_____
Lay Magistrate

Dated

Form C26

File No:

THE CHILDREN (NORTHERN IRELAND) ORDER 1995
(Article 60)

ORDER MAKING THE APPOINTMENT OF
A GUARDIAN AD LITEM

Family Proceedings Court at

Applicant

County Court Division of

Respondent

Child(ren):

Name	Gender	Date of Birth

The Court makes the appointment of a guardian ad litem for the said child(ren) in the proceedings for

This order has been made ex-parte.

Signed:

LAY MAGISTRATE

Dated:

Form C41

Emergency Protection Orders – Article 63

References to Rules are to the Magistrates' Court (Children (Northern Ireland) Order 1995 Rules (Northern Ireland) 1996. References to forms are as contained in those Rules.

"An emergency protection order"
Gives the applicant "parental responsibility" for a child under the age of 18. It authorises the removal of the child at any time to accommodation provided by or on behalf of the applicant and his being kept there. It may permit the prevention of the child's removal from any hospital or other place, in which he was being accommodated immediately before the making of the order (Article 63(4)).

Initiating the application
An application for "an emergency protection order" **can be made ex parte with the leave of the court (Rule 5). (See Section 3 entitled "Conducting Ex parte proceedings").**

Powers of the Court
The court may make "an emergency protection order" if it is satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm etc. (Article 63(1)).

"An emergency protection order" shall name the child otherwise he shall be clearly described (Article 63(14)).

The court may in addition make an "exclusion requirement" if the conditions as set out under Exclusion Requirements overleaf are applicable.

Duration of Order
The order shall have effect for a specified period **not exceeding 8 days** (Article 64(1)).

In calculating this period due account should be taken of section 39 of the Interpretation Act (Northern Ireland) 1954 relevant sections of which are reproduced below:

39 (1) …….

(2) Where in an enactment a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall not be included in the period.

(3) Where in an enactment a period of time is expressed to end on, or to be reckoned to, a particular day, that day shall be included in the period.

(4) Where the time limited by an enactment for the doing of anything expires or falls upon a Sunday or a public holiday, the time so limited shall extend to and the thing may be done on the first following day this is not a Sunday or a public holiday.

(5) …….

(6) …….

(7) In an enactment the expression "public holiday" shall include Christmas Day, Good Friday, any bank holiday appointed by or under any statutory provision and any day for public thanksgiving or mourning.

Where the child is kept in police protection (Article 65) the period commences on the day the child was taken into such protection (Article 64(2)).

Associated powers and orders
An emergency protection order may contain:

(i) a direction as to the disclosure of information as to a child's whereabouts (Article 67(1));

(ii) an authority to enter specified premises and search for the child. (Article 67(3)).

(iii) an authority to search for another child (Article 67(4)). Where such authority is given, the child is found and the applicant is satisfied that grounds for the making of "an emergency protection order" exist the order (under Article 67 (4)) shall have effect as if it were "an emergency protection order" (Article 67(5)). In these circumstances the duration of the "deemed" order would be governed by the order which included the provision and would therefore be subject to extension.

NB the applicant **must** inform the court of the outcome of an Article 67(4) order (Article 67 (6)) which notification should be held on the case file.

(iv) directions as to contact or non-contact between the child and any named person (Article 63(6)(a)).

(v) directions as to medical or psychiatric examination or other assessment of the child (Article 63(6)(b)).

NB If of sufficient understanding a child may refuse to submit to an examination/assessment (Article 63(7)). Such a refusal should be noted in the Record of Proceedings (Form C19) and the Order (Form C18).

(vi) An exclusion requirement (Article 63A (1) and (3)).

(vii) A direction that a constable may be accompanied by a medical practitioner, registered nurse or health visitor (Article 67(11)).

In addition, the court can issue a warrant authorising a constable to assist a person exercising powers under "an emergency protection order" (Article 67(9)) **(See Section 9 - Powers to assist in discovery …)**

Exclusion Requirements

When the court is satisfied that an **emergency protection order** should be made and that the conditions mentioned in Article 63A(2) are satisfied, it **may include** an exclusion requirement in the emergency protection order.

The conditions mentioned in Article 63A(2) are:

(a) that there is reasonable cause to believe that if a person ("the relevant person") is excluded from a dwelling house in which the child lives, then:

(i) in the case of an order made on the ground mentioned in Article 63(1)(a), the child will not be likely to suffer significant harm even though the child is not removed as mentioned in Article 63(1)(a)(i) or does not remain as mentioned in Article 63(1)(a) (ii), or

(ii) in the case of an order made on the ground mentioned in sub-paragraph (b) or (c) of Article 63(1) the enquiries referred to in that sub-paragraph will cease to be frustrated, and

(b) that there is another person (whether a parent of the child or some other person) who is able and willing to live (or to continue to live) in the dwelling house and who –

(i) is able and willing to give the child the care which it would be reasonable to expect a parent to give him

AND

(ii) that other person consents to the inclusion of the exclusion requirement

NB: Where the court includes an exclusion requirement in an emergency protection order, the applicant shall prepare (and subsequently serve on the relevant person) a separate statement of the evidence in support of the inclusion of an exclusion requirement.

Consent for the purposes of Article 63A(2)(b)(ii) may be given either orally in court or in writing signed by the person giving the consent.

An exclusion requirement is any one or more of the following:

(a) a provision requiring the relevant person to LEAVE A DWELLING HOUSE in which he is living with the child.

(b) a provision PROHIBITING the relevant person from ENTERING a DWELLING HOUSE in which the child lives, and

(c) a provision EXCLUDING the relevant person FROM A DEFINED AREA in which a dwelling house in which the child lives is situated AND ANY OTHER DEFINED AREA.

Duration of Exclusion Requirement
An exclusion requirement may have effect for a shorter period than the other provisions in the emergency protection order (Article 63A(4)).

However, the exclusion requirement period specified in the order may be extended by the court (on one or more occasions) on an application to vary or discharge the **emergency protection order** (Article 63A(5)).

The **emergency protection order** shall cease to have effect in so far as it imposes the exclusion requirement if the applicant removes the child from the dwelling house from which the relevant person is excluded, to alternative accommodation for a continuous period of more that 24 hours (Article 63A(6)).

Appeal
No appeal lies against the making or refusal to make any order or direction (Article 64(9)).

Who can apply?
Any person, an authority or an authorised person (Article 63(1)).

"authority"	means "a Board" (see also Article 2(3))
"board"	means "a **Health and Social Services Board"**
"a Health and Social Services Board"	means "a …….. trust" (Article 2(2))
"authorised person"	means the NSPCC or any person authorised by the Department and any officer of a body so authorised (Article 49(2) and 63(2)(a)).

Completing the order book where Article 63 Orders are made
Where an order is made Section E of the Order Book **must** be completed by entering such of the following as are appropriate:

Emergency protection order – Article 63

Where the application is made by "any person" under Article 63(1)(a)

The court being satisfied that there is reasonable cause to believe that the said child[ren] [is] [are] likely to suffer significant harm if –

*1. [he] [she] [they] [is] [are] not removed to accommodation provided by or on behalf of the applicant.

*2. [he] [she] [they] [does] [do] not remain in the place in which [he] [she] [they] [is] [are] then being accommodated, namely (insert details of place)

*[*delete as appropriate]*

grants an emergency protection order to the applicant in respect of [name child[ren]].

Where the application is made by an "authority" under Article 63(1)(b)

The court being satisfied that

Inquiries under Article 66(1)(b) are being made with respect to the said child[ren] and those inquiries are being frustrated by access to the child[ren] being unreasonably refused to a person authorised to seek access and the applicant has reasonable cause to believe that access to the said child[ren] is required as a matter of urgency.

grants an emergency protection order to the applicant in respect of [name child[ren]].

Where the application is made by an "authorised person" under Article 63(1)(c)

The court being satisfied that

(i) the applicant has reasonable cause to suspect that the said child[ren] [is] [are] [suffering] [is] [are] likely to suffer] significant harm; and

(ii) the applicant is making inquiries with respect to the said child[ren]'s welfare and those enquiries are being frustrated by access to the said child[ren] being unreasonably refused to a person authorised to seek access and the applicant has reasonable cause to believe that access to the said child[ren] is required as a matter of urgency.

grants an emergency protection order to the applicant in respect of [name child[ren]].

Associated orders

Where the court exercises any of the following powers:

Article 67(1) Order of disclosure as to child's whereabouts

Article 67(3) Authorisation to enter premises and search for child

Article 67(4) Authorisation to enter premises and search for another child

Article 67(9) Warrant authorising constable to assist person

appropriate wordings should be added to the substantive order ***(see Section 9 – Article 67 - Powers to assist in discovery of children who may be in need of emergency protection)***

If the court exercises its powers under Article 63(6)(a) or (b) or 63A or 67(11) the following should be recorded after the substantive order

Contact between child and any named person – Article 63(6)(a)

The court directs that

(name and address of person allowed or not allowed contact)

* [be allowed contact with (name child[ren]) as follows:

  (Insert periods of contact to be allowed and specify conditions as appropriate)];

* [is not permitted to have contact with (name child[ren])

*[*delete as appropriate]*

Directions as to medical or psychiatric examination or other assessment – Article 63(6)(b)

The court directs that (name child[ren])

* [be [examined] [assessed] as follows – [insert details of medical or psychiatric examination or other assessment]

* [should not be [examined] [assessed]]

* [should not be [examined] [assessed] unless the court directs otherwise]

*[*delete as appropriate]*

Direction as to exclusion requirement – Article 63A

The court directs that

(name, and where applicable, address of person to be excluded)

* [leave] [be excluded from] (insert address or, where applicable, defined area)]

* (forthwith) (from [date])

* (Written) (Oral) consent to the above exclusion requirement having been given by (a named person).

*[*delete as appropriate]*

NB ***Details of the substantive emergency protection order must be reflected in form C20 which should be prepared in duplicate. A signed form C20 should be handed to the applicant. The second copy should be retained by you and endorsed with the time the order was handed to the applicant and the applicant's name etc.***

See also Section 9 - "Powers to assist in discovery of children who may be in need of emergency protection".

See Section 7 entitled "The Forms" for annotated precedents.

Return to Index

POWERS TO ASSIST IN DISCOVERY OF CHILDREN WHO MAY BE IN NEED OF EMERGENCY PROTECTION – ARTICLE 67

References to Rules are to the Magistrates' Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996. References to forms are as contained in those Rules.

The powers of the court.

Art. 67 powers can be exercised in the following circumstances:

Table 1

1. Where on making an "emergency protection order" there is inadequate information as to a child's whereabouts (Article 67(1)).	An Article 63 order can include (i) Provision as to disclosure of child's whereabouts (Article 67(1)). (ii) Provision to enter premises and search for child (Article 67(3)). **NB These powers can only be exercised where the court is considering an Article 63 application.**
2. Where court believes child is on premises (Article 67(4)).	Court can authorise applicant to search for that other child (Article 67(4)) (form C24). Such an order can have effect as if it were an "emergency protection order" (Article 67(5)). **NB These powers can only be exercised where the court is considering an Article 63 application.**
3. Where **application** is made for warrant (Article 67(9)).	Court may issue warrant authorising constable to assist etc. (Article 67(9)) (form C22). Court may direct that constable be accompanied by medical practitioner etc. (Article 67(11)). **NB These powers can be exercised when making an Article 63 order or subsequently while order is in force.**

Order of disclosure as to child's whereabouts – Article 67(1)

It appears to the Court that adequate information as to the said child[ren]'s whereabouts is not available to the applicant but is available to

(insert name(s) and addresses of persons having information)

It is ordered that (insert name(s) of persons having information) disclose any information that he may have as to the said child[ren]'s whereabouts if asked to do so by the applicant.

NB. ***Details of this order must be reflected in form C20 (Emergency Protection Order) which should be prepared in duplicate. A signed form C20 should be handed to the person who made the application. The second copy should be retained by you and endorsed with the time the order was handed to that person and his name etc.***

See Section 7 entitled "The Forms" for annotated precedents.

Authorisation to enter premises and search for child – Article 67(3)

The applicant is authorised to enter premises, namely

(Insert full description of premises)

To search for the said child[ren].

NB. ***Details of this order must be reflected in form C20 (Emergency Protection Order) which should be prepared in duplicate. A signed form C20 should be handed to the person who made the application. The second copy should be retained by you and endorsed with the time the order was handed to that person and his name etc.***

See Section 7 entitled "The Forms" for annotated precedents.

Authorisation to enter premises and search for another child – Article 67(4)

The court being satisfied that there is reasonable cause to believe that there may be another child, namely

(Insert name, address and date of birth of child or description of child if name etc., not known)

RECOVERY OF ABDUCTED CHILDREN – ARTICLE 69

References to Rules are to the Magistrates' Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996. References to forms are as contained in those Rules.

"authorised person" means any person specified by the court, any constable and any person authorised after the recovery order is made (Article 69(7)).

"designated officer" means a police officer designated by the Chief Constable etc. (Article 65(4)).

"responsible person" means any person who for the time being has care of the child by virtue of the emergency protection order, care order or under Article 65.

Overview

Article 69 provides for the making of "recovery orders" (form 26) in respect of children who are:

(i) in care;

(ii) the subject of an emergency protection order; or

(iii) in police protection

(Article 68(2))

and who have been unlawfully taken, unlawfully kept, run away or are missing (Article 69(1)).

Initiating the application

An application for a "recovery order" can be made **ex parte with the leave of the court (Rule 5).** (See "Conducting Ex parte proceedings" – Section 3)

Recovery of abducted children – Article 69

*It appearing to the court that (*insert name etc.*) has parental responsibility for (*insert name, address, date of birth of child[ren*] *or if not known a description of the child*) by virtue of

** an emergency protection order made on (*date*) at (*details of court which made the order*)

** a care order made on (*date*) at (*details of court which made the order*)

[** delete as appropriate]

*It appearing to the court that the said child is in police protection and that the designated officer is (*insert name, number, rank and station of designated officer*)

It appearing to the court that there is reason to believe that the said child[ren]

** has [have] been unlawfully taken away from the responsible person, namely (*insert name etc.*)

** is [are] being unlawfully kept away from the responsible person, namely (*insert name etc.*)

** has [have] run away from the responsible person, namely (*insert name etc.*)

** is [are] staying away form the responsible person, namely (*insert name etc.*)

** is [are] missing

[*Delete as appropriate]
[**Delete as appropriate]

makes a recovery order in respect of the said child[ren].

The Court authorises (*insert name etc.*) to remove the said child[ren].

It is ordered that any person who is in a position to do so produces the said child[ren] on request to any authorised person;

It is order that any person who has information as to the child[ren]'s whereabouts disclose that information, if asked to do so, to a constable or an officer of the court.

The Court authorises a constable to enter (*specify premises*) and search for the said child[ren], using reasonable force if necessary.

1.

OATHS AND OATH-TAKING

OATHS AND OATH-TAKING

Introductory

This advisory paper has been prepared in response to the requests which have been received from a number of judges and recorders for practical advice about what should be done when witnesses from different religions or sects take the oath in court.

It represents the first attempt which the Judicial Studies Board, with the help of its new Ethnic Minorities Advisory Committee, has made to give answers to a number of the questions which have been raised. Although the word "judge" is used throughout, the advice applies in any case when a court or tribunal in England and Wales is receiving sworn evidence in circumstances governed by the Oaths Act 1978.

The advice is also applicable, provided that the appropriate form of words is used after the relevant oath, when oaths are administered outside court, for example when an affidavit is taken before a Commissioner for Oaths.

The paper sets out guidance on points of good practice in relation to the way the oath should be administered in the case of witnesses belonging to a number of the more familiar religions or sects who now often give evidence in courts in England & Wales. The wording of the more common oaths taken by witnesses from different religions or sects is set out in Appendix 1 to this paper, and the wording of other types of oath taken in court is set out for convenience in Appendix 2.

The paper also contains reference to the minimum requirements of the law in relation to the taking of oaths, as explained by the Court of Appeal in the case of *Kemble* [1990] 91 Cr. App. R. 178. In that case the Court of Appeal makes it clear that the only duty of a court is to consider whether the witness is taking an oath which appears to the court to be binding on the witness's conscience, and if so, whether it is an oath which the witness himself considers to be binding on his conscience.

Although the paper has been prepared with the needs of those who sit on the Bench particularly in mind, the Board hopes that the paper may also be of value to commissioners for oaths and also to court administrators and court staff, on whom the primary responsibility rests of ensuring that witnesses or jurors take the oath in accordance with the good practice on the holy book of their choice, or that they affirm if they prefer to do so. The more that written notices or leaflets, in different languages, where necessary, can be used in courts telling witnesses that the court is anxious that their

preferences should be followed when they come to give evidence, the more it is likely that insensitive mistakes will be avoided.

Further editions of this guidance are likely to be published from time to time, as more practical difficulties are identified and other queries raised. Comments about this Paper or any other constructive suggestions should be addressed to the Secretary of the Ethnic Minorities Advisory Committee, the Judicial Studies Board, 14 Little St James's Street, London, SW1A 1DP.

Although the masculine gender is used in this paper for ease of expression, the advice applies to male and female witnesses equally.

1. The Oaths Act 1978

The formal legal position, so far as it goes, is set out in the Oaths Act 1978. The relevant provisions of this Act are set out in Appendix 3 at the end of this paper. It will be seen that although the Act prescribes what is to be done in the case of a Christian or a Jew, it says that the oath shall be administered "in any lawful manner" in the case of a person who is neither a Christian nor a Jew.

In *R v Chapman* [1980] Crim. L.R. 42 C.A. it was held that the efficacy of an oath depends upon it being taken in a way which is binding and intended to be binding upon the conscience of the intended witness.

In *R v Kemble* [1990] 91 Cr. App. R. 178 Lord Lane C.J. quoted this dictum in *Chapman's* case and added:

> "We take the view that the question of whether the administration of an oath is lawful does not depend upon what may be the considerable intricacies of the particular religion which is adhered to by the witness. It concerns two matters and two matters only in our judgement. First of all, is the oath an oath which appears to the court to be binding on the conscience of the witness? And if so, secondly, and more importantly, is it an oath which the witness himself considers to be binding upon his conscience?"

In that case a witness who was a Muslim had taken an oath at a criminal trial on the New Testament. In the Court of Appeal the witness took the oath on a copy of the Koran in Arabic. He told the Court of Appeal on oath that he did consider himself to be bound as to his conscience by the way in which he had taken the oath at the trial. He added that

whether he had taken the oath upon the Koran or upon the Bible or upon the Torah he would still have considered it to be binding on his conscience.

The Court of Appeal accepted his evidence and found that he considered all those books to be holy books and that he did consider that his conscience was bound by the form of the oath he had in fact taken at the trial and the way in which he had taken it. There was therefore no material irregularity about his evidence.

The Act allows a person who objects to being sworn to make a solemn affirmation instead of taking an oath. [This should always be permitted once a witness objects to taking an oath.]

Furthermore, if it is not reasonably practicable, without inconvenience or delay, to administer an oath to a person in the manner appropriate to his religious belief, the Act also allows such a person to make a solemn affirmation instead of taking the oath.

2. The significance attached to the oath

Many people from ethnic minorities attach great importance to the fact that evidence is given on oath. There is, for example, some evidence that Muslim jurors are unwilling to believe a witness who is apparently Muslim if he refuses to bind his conscience by taking the oath on the Koran. There was a recent case in which a district judge saw a witness, who had been consistently denying liability for a debt, change his stance dramatically once he had taken an oath to tell the truth on the Koran.

Furthermore, if a defendant from an ethnic minority sees a witness from his own cultural background, who is not necessarily of the same religion, taking the oath on a holy book which he clearly does not believe in, he may well be left with a suspicion that the witness has not told the whole truth because his conscience has not been effectively bound.

3. The availability of the appropriate holy books

Good practice therefore demands that the holy books of all those who often come to a particular court to give evidence should be available for witnesses. For courts with significant local Asian communities, this means the Gita (Hindu), the Adi Granth (Sikh) and the Koran (Muslim) at the very minimum.

4. Witnesses willing to take the oath on the holy Book of another religion

It sometimes happens that a witness who comes from a non-Christian religion says that he is willing to take the oath on the Bible if his own holy book is not for some reason available at the court. Although the case of *Kemble* makes it clear that this will not necessarily invalidate his evidence, provided that the two conditions set out in that case are satisfied, it is undesirable that this situation should arise, and it is much better practice that such a witness should be permitted to affirm. Otherwise a judge would be led into the potentially embarrassing area of having to decide whether the witness is really willing to allow his conscience to be bound by taking the oath on the holy book of a religion in which he does not believe.

5. The requirements of good practice by court staff

Good practice demands that both jurors and witnesses should be asked by court staff whether they wish to take the oath or to affirm before the come into court. If they wish to take the oath, they should then be invited to identify the holy book on which they wish to be sworn.

At present, witnesses are often simply asked by court ushers whether they are willing to take the oath on the New Testament, even if they say they are not Christian. They may not be aware that their own holy book is available at court and may not want to draw attention to themselves or cause inconvenience by asking for it.

If the appropriate holy book is not available, it is good practice that the witness should then be invited to affirm, even if he may express willingness to be sworn on the holy book of some other religion.

6. The need for sensitivity

It must always be remembered that many witnesses from ethnic minorities take their religion very seriously. It is nearly always a nerve-racking experience to give evidence in a public court, especially if a witness comes from a culture or religion which is different from that of most people in court, and every effort must be made to accommodate the witness's own religious practices in a sensitive way. If this is not done, witnesses are likely to go along with what the usher or court clerk suggests and

take the oath on whichever holy book is offered to them. Good practice demands that this situation is avoided whenever possible.

On the other hand, not all ethnic minority witnesses (including those from the Indian sub-continent, for example) are necessarily religious, and some of them, too, may object to taking an oath and may wish to affirm. They are legally entitled to object to being sworn, and they should not be treated with suspicion, or pushed into taking oaths on a holy book by which their consciences are not bound.

7. Washing before taking the oath

Witnesses from the Sikh and Muslim religions may ask for permission to wash their hands, feet or other parts of their body before they take the oath on their holy book. The reason behind this request is that they wish to be clean when touching the holy book. This applies particularly in the case of their hands. A request for appropriate washing facilities is a reasonable request and a judge should go as far as reasonably practicable in order to accommodate it. Facilities to wash hands or feet are, or ought to be available at all courts, and even if a few minutes' delay is caused, proper respect for the witness and his religion dictates that the request should be accommodated.

If these facilities are not provided, such a witness may refuse to take the oath on his holy book. He may not then feel conscience bound to tell the whole truth because he may regard a solemn affirmation as very much less effective to bind his conscience.

On the other hand, Muslim women are considered to be unclean when they are menstruating, and will ask whether they may be permitted to affirm if they are asked to give evidence during their monthly periods. This request should always be granted. See, on this point, *Kemble* [1990] 91 Cr. App. R. 178 at p.180.

8. Other practices: removing shoes or covering the head

Some witnesses, for example those from the Sikh faith, may wish to remove their shoes and cover their heads when taking the oath. This is a practice which should be allowed since this is how such a witness would feel most conscience bound to tell the truth.

9. Handling holy books

There are a number of holy books such as the Gita (Hindu), the Adi Granth (Sikh) and the Koran (Muslim) which ought to remain covered except when they are being touched by the witness taking the oath. They should only be handled out of their wrapping and packaging by the witness himself, especially if the witness has asked to be cleaned before handling the relevant holy book. Some people take offence if their holy book is handled out of its wrapping by someone, for example an usher, who has not washed his hands.

Every effort should be made to avoid marking holy books with notices along the side or on the cover with markings such as "Jewish", "Hindu", as this will devalue the holy books in the eyes of witnesses who take their religion seriously. A box with compartments containing the different holy books which are readily identifiable by signs on the outside of the box is often regarded as a convenient way of ensuring that all the necessary holy books are available in court and are readily available when needed.

The practice which is adopted in some courts of attaching the Jewish headcovering to the Old Testament with a rubber band, which looks disrespectful and often results in the covering becoming dirty and cramped, should not be followed.

10. Holding the holy book in the right hand

There is nothing in the Oaths Act which prescribes the hand in which any holy book should be held when the oath is taken: the hand which is used merely has to be "uplifted". As a matter of practice witnesses are normally invited to hold the book in their right hand.

Muslims, however, attach particular significance to the tasks which should be carried out by the right or the left hand, and when a Muslim is taking the oath on the Koran he should hold it in his right hand.

11. Jews

Whilst some male Jews may prefer to cover their heads this is not a requirement of the Oaths Act and failure to cover the head should not be seen as an indication of untruthfulness. Jewish Law regards the act of taking an Oath or Affirmation as

equally binding whether the head is covered or uncovered. Certain Jews who wish to have their heads covered at all times should not be considered disrespectful to the court.

The Oaths Act requires that Jews take the oath on the Old Testament.

12. Hindus

In some courts a practice has developed by which Hindu witnesses sworn on the Gita, take an oath which starts "I swear by Almighty God". This is not correct practice, and the form of oath set out in Appendix 1 should be followed.

13. Buddhists

In the past court staff have been instructed to administer a form of declaration to Buddhists which starts "I declare in the presence of Buddha that…" This form of declaration is quite wrong and unacceptable to Buddhists and should not be used. Buddhists will be very ready to make the normal form of solemn affirmation.

If a Tibetan Buddhist wishes to take an oath in a court, he should be invited to state the form of oath which he will regard as binding on his conscience. In their practice, if and when oaths are taken, they are normally taken in front of a picture of a deity or a photograph of the Dalai Lama or any lama of the individual witness's practice. Sometimes such a witness will take an oath by taking a religious textbook on his head and swearing by it. If such a witness does not stipulate for such a practice and have the appropriate articles available with him in court, he should be permitted to affirm.

14. Chinese

In the past court staff have been instructed to administer a form of declaration to Chinese witnesses in a ceremony which involves breaking a saucer. This ceremony, which was instituted in the Imperial Courts of China many centuries ago, is very rarely practiced today in courts of law, although it is practised by the Triads during their secretive initiation ceremonies. It is probably because of this association that the Chinese today do not ask or choose to take the oath in this manner. It should therefore not be used.

Unless they are Christians (and there are more than 50 Chinese churches in cities and major towns in this country), Chinese witnesses should be asked to make a solemn

affirmation. In the minds of the Chinese from Hong Kong and South-East Asia, an oath or affirmation would be taken most seriously if the witness is required to give his or her signature to a written copy of the oath or affirmation. By Chinese tradition, one's signature is one's word of honour.

If a court is in an area where there are a significant number of Chinese Christians, it would be desirable to have a bible written in Chinese script available for Chinese Christian witnesses.

15. Very strict usage

It sometimes happens that a very strict adherent of a religion, for example the Jewish religion, may decline to take an oath on his holy book. This is because he fears that he may unwittingly say something which is not true, and it would have a serious effect on his conscience if he later discovered that this was the case. If such a witness wishes to affirm, the judge should grant his request without subjecting him to rigorous cross-examination or suspecting him of hypocrisy.

16. Rastafarians

The Rastafarian religion was founded in Jamaica in the 1930s as part of an attempt to establish people's pride in their African identity in a country whose culture was being swamped by Western values. The use of Marijuana is viewed as a sacrament in place of the burning of incense. The religion is focused on Ras Tafari, which is the name of the Emperor of Ethiopia, Haile Selassie 1. Ethiopia was then the only independent black country in Africa, with its own orthodox church.

Rastafarians are a recognised religious body of people, whose beliefs are based on the Bible. Rastafarians are just as likely to be Christians and willing to allow their consciences to be bound by an oath on the Christian bible as are very many others who have family backgrounds from the Caribbean, where the Christian religion was the predominant religion in the different islands.

Many Rastafarians will wear a hat in Court as it is part of their religious custom to cover their heads. A Rastafarian who wishes to keep his hat on when appearing in Court in any capacity should be allowed to do so. It is equally part of their custom to wear the colours, gold, red and green as stripes around the hat or head or as a medallion around the neck.

Rastafarians who are willing to allow their consciences to be bound by an oath will be happy to take the oath on the authorised King James version of the Bible. Some Rastafarians will substitute the word “Jah” for the word “God”. The normal procedure for taking the oath is acceptable to Rastafarians.

17. Conclusion

The judge should do his best to be on the lookout for the dishonest witness who wishes to abuse the system. Subject to this caveat, it is now more important that ever that judges and court staff treat the taking of oaths with great sensitivity, particularly as there are now many witnesses from ethnic minorities giving evidence in English and Welsh courts who attach great importance to the proper formalities of oath-taking. On the other hand, the law imposes no duty upon the judge to ask a witness whether he wants to involve himself in what Lord Lane C.J. described in the case of *Kemble* as the “considerable intricacies” of different religious practices provided that the two basic requirements set out in that case are satisfied.

Return to Index

APPENDIX 1

THE COMMONEST OATHS TAKEN BY WITNESSES

Hindu (Taken on the Gita)

I swear by the Gita that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

Jew (Taken on the Old Testament)

I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

Muslim/follower of Islam (Taken on the Koran)

I swear by Allah that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

Sikh (Taken on the Adi Granth)

I swear by Guru Nanak that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

Quaker or Moravian witness (Affirmation)

I being one of the people called Quakers (United Brethren called Moravians) **do solemnly sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.***

Note: The words in bold are appropriate for all witnesses who object to being sworn and who wish to affirm.

APPENDIX 2

OTHER FORMS OF OATH TAKEN IN COURT

Note: In every case the appropriate form of oath or affirmation (in Appendix 1) precedes the words set out below:

1. Jurors

"…..that I will faithfully try the defendant(s) and give a true verdict (true verdicts) according to the evidence."
"…..that I will faithfully try whether the defendant is under some disability so that he cannot be tried and give a true verdict according to the evidence."
"…..that I will faithfully try whether the defendant stands mute of malice or by the visitation of God (whether he is able to plead) (whether he is sane or not and of sufficient intellect to comprehend the proceedings) and give a true verdict according to the evidence."

2. Witnesses

"…..that the evidence which I will give shall be the truth, the whole truth and nothing but the truth."
"…..that I will answer truthfully any questions which the court may ask of me."

3. Interpreters

"…..that I will well and faithfully interpret and true explanation make of all such matters and things as shall be required of me according to the best of my skill and understanding."

APPENDIX 3

Relevant provisions of the Oaths Act 1978

"1. (1) Any oath may be administered and taken in England, Wales or Northern Ireland in the following manner:-

The person taking the oath shall hold the New Testament, or in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words "I swear by Almighty God that…..", followed by the words of the oath prescribed by law.

(2) The officer shall (unless the person about to take the oath voluntarily objects thereto, or its physically incapable of so taking the oath) administer the oath in the form and manner aforesaid without question.

(3) In the case of a person who is neither a Christian nor a Jew, the oath shall be administered in any lawful manner.

(4) In this section "officer" means any person duly authorised to administer oaths.

……

3. If any person to whom an oath is administered desires to swear with uplifted hand, in the form and manner in which an oath is usually administered in Scotland, he shall be permitted to do so, and the oath shall be administered to him in such form and manner without further question.

4. In any case in which an oath may lawfully be and has been administered to any person, if it has been administered in a form and manner other than that prescribed by law, he is bound by it if it has been administered in such form and with such ceremonies as he may have declared to be binding.

(2) Where an oath has been duly administered and taken, the fact that the person to whom it was administered had, at the time of taking it, no religious belief, shall not for any purpose affect the validity of the oath.

5. (1) Any person who objects to being sworn shall be permitted to make his solemn affirmation instead of taking an oath.

(2) Subsection (1) above shall apply in relation to a person to whom it is not reasonably practicable without inconvenience or delay to administer an oath in

the manner appropriate to his religious belief as it applies in relation to a person objecting to be sworn.

(3) A person who may be permitted under subsection (2) above to make his solemn affirmation may also be required to do so.

(4) A solemn affirmation shall be of the same force and effect as an oath."

Return to Index