



**S.46 Children Act 1989 (Police Powers)
Protocol for Agencies Working with Children
and Young Persons Under 18 Years**

**THE MID AND WEST WALES
SAFEGUARDING BOARD**

Version	Revision Date	Owner	Date approved by Exec Board	Review Date
V1	11/7/21	Mid and West Wales Safeguarding Board	11/7/19	11/7/20

Introduction

This Protocol is intended to provide guidance for member agencies of the Mid and West Wales Regional Safeguarding Board (CYSUR) to follow when a child has been identified as being at risk of significant harm and the utilisation of the police power granted under Section 46, Children Act 1989 is being considered. Application of the Protocol should ensure a consistent response from member agencies.

The overriding principle is that **the separation of a parent and child should usually be a decision for a Court. If it is possible to seek a Court hearing, that should be done.** However, the legislation allows for an emergency police response without deferring to a Court in order to remove a child from a situation posing a risk of significant harm *and* where it is necessary to ensure the immediate safety of the child.

Police protection should *not* be used where other powers or arrangements available to agencies are more appropriate. The use of this power is only in exceptional circumstances when no other option is available.

The Legal Framework

Section 46, Children Act 1989 states: *“Where a constable has reasonable cause to believe a child would otherwise be likely to suffer significant harm he/she may remove the child to suitable accommodation and keep him/her there; or take such steps as are reasonable to ensure that the child’s removal from any hospital, or other place, in which he/she is then being accommodated is prevented. Where a constable exercises the above power, the child is deemed to be under police protection.”*

The power can be exercised by any police officer. The power is not an order granted by a court so therefore should *not* be referred to as a Police Protection Order.

Once invoked, a child can be kept in police protection for a maximum of 72 hours. The power does not confer parental responsibility on the police and the Act does not grant police a power of entry – other powers of entry will need to be considered i.e. warrant or Section 17 Police and Criminal Evidence Act 1984 (enter a property to save life and limb). Reasonable force may be used in the exercise of this power.

Section 77, Social Services and Well-being (Wales) Act 2014 provides that a local authority must receive and provide accommodation for children in police protection whom they are requested to receive under Section 46.

Significant harm is defined by Section 31(9) of the Children Act 1989, as, *“the ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another.”* Ill-treatment can be caused by Physical abuse, Sexual abuse, Emotional abuse and/or Neglect. When establishing whether the harm to a child is significant, the health and development of that child will be compared with what should reasonably be expected of a similar child along with other factors such as adequacy of parental care, the family context, and any particular needs the child has.

Options for Emergency Protection of a Child

Action to protect a child may be one of the five options described below. The first three options should always be considered before removing a child using compulsory powers:

- The alleged abuser agrees to leave the household. Local services may be required to provide practical help and assistance on matters such as accommodation;
- Parents/caregivers make safe arrangements for the child to be cared for within the extended family subject to safeguarding checks being made as to their suitability, which should be described in local procedures (see below);
- The local authority provides accommodation for the child under Section 76, Social Services and Well-being (Wales) Act 2014 with the agreement of those with parental responsibility;
- Social Services apply for an Emergency Protection Order;
- The police use their powers of protection in exceptional circumstances when no other option is available.

Where it is necessary to use compulsory powers to remove a child, a local authority should, wherever possible and **unless a child's safety is otherwise at immediate risk**, apply for an Emergency Protection Order (EPO), in line with the principle that the separation of a parent and a child should be a decision for a Court, and should not seek to use police powers of protection for this purpose. All local authorities should have in place local arrangements whereby out of hours applications for Emergency Protection Orders may be made speedily and without an excess of bureaucracy.

An unborn child cannot be subject of an Emergency Protection Order. If it is believed that an unborn child is likely to be at risk of significant harm, Police Protection should be considered as the appropriate way to safeguard the child immediately following birth to allow Social Services to take necessary safeguarding actions. This will require close collaboration between Police, Health and Social Services.

Invoking Police Protection

Prior to making the decision to invoke Section 46 Police Protection the police officer should *always* seek to liaise with Social Services and a higher ranking officer to discuss all options to safeguard the child. This liaison could be direct from the scene or via the officer's supervisor. A Social Services duty officer is available during office hours and an emergency social worker/senior manager out of hours (*Note* - The emergency social worker may not be a dedicated Children's Services social worker with detailed knowledge of practices in relation to child social care). If the child is an open case or otherwise known to Social Services they will likely have access to information which, through early liaison, could assist with decision-making and offer possible alternative options to invoking Police Protection.

In cases out of hours, particularly during night time hours, where the use of compulsory powers to safeguard a child are considered necessary there may be practical issues in obtaining an Emergency

Protection Order speedily. In those cases, it will be necessary to consider the time and practicalities of obtaining an Emergency Protection Order against invoking Police Protection to provide emergency safeguarding. ***Early engagement with the emergency social worker will provide significant assistance to this decision making process.***

This Protocol acknowledges that situations will exist, for example where there is an immediate high level of risk to the child's safety, in which it is ***necessary*** for a Police Officer to act ***immediately*** without reference to Social Services or more senior officers in order to safeguard a child.

In order to invoke Section 46, a police officer must *believe* that the child would suffer *significant harm* if not taken into police protection. An officer considering invoking Police Protection in respect of a child must also consider any ongoing risk of significant harm to any other children.

There are two separate and distinct roles for officers in relation to police protection – the “**Initiating Officer**” and the “**Designated Officer**”. The Initiating Officer is the officer who takes the child into police protection and undertakes the initial enquiries. The Designated Officer is the officer, usually an Inspector, who takes an independent oversight of the circumstances in which the child has been taken into police protection. The same officer *must not* carry out these 2 separate roles.

In deciding whether to invoke the Section 46 power, the child's wishes, if capable of understanding, should be factored into the decision making process. The Initiating Officer should keep the child informed throughout the process. All professionals involved in the decision should be mindful that removing a child from the parent's care at any time can be a traumatic experience for the child and sensitivity is essential.

If the decision is to invoke police protection, and once appropriate safeguarding measures have been put in place, the Initiating Officer must complete a Police Protection Form prior to the end of that tour of duty and, if not already done, *liaise with Social Services as soon as is reasonably practicable*. This discussion will include agreeing a course of action and identifying suitable accommodation for the child. Social Services includes the local authority for the area the child is found *and* from where the child is ordinarily resident, if different. The exact time that a child was placed in police protection must be recorded.

The Initiating Officer must inform the parents of the child, any other person with parental responsibility, and any person who the child was living with prior to being taken into police protection that the child is subject to Section 46 police protection. The Initiating Officer will also keep the child informed of steps being taken.

The Initiating Officer will liaise with the Designated Officer to agree actions and provide updates.

The Designated Officer must be of at least the rank of Inspector. The role of the Designated Officer is to ensure police protection has been invoked appropriately; to have responsibility for enquiring into cases in which police protection has been invoked; to have oversight of the process throughout; to ensure that the Initiating Officer completes the necessary actions; and to ensure that the accommodation where the child is placed is appropriate and does not place the child at further risk. Once the enquiry has been completed, which will include a strategy discussion with Social Services, the Designated Officer must release the child from police protection unless there is still reasonable cause to believe that the child will be likely to suffer significant harm if released. The Designated

Officer will complete the Police Protection Form including the time that the child is released from Police Protection.

There must be a named Designated Officer throughout the period that a child is in Police Protection. At the end of a Designated Officer's tour of duty, a handover including the Police Protection Form must be made to the next identified Designated Officer who will continue with the role.

Ending Police Protection

A child should only be discharged from police protection if:

- he/she is considered by the Designated Officer to be no longer at risk; or
- an Emergency Protection Order (EPO) has been made; or
- he/she has been provided with accommodation by the local authority under section 20 of the Act (amended by Section 76 Social Services and Well-being (Wales) Act 2014) and is no longer considered to be at risk of significant harm.

The decision to release a child from police protection should *only* be made following discussion with Social Services. If the Designated Officer is not involved in this discussion, the outcome must be conveyed to him/her as soon as possible for consideration of ending the police protection. **The placement of a child in social services accommodation or foster care may be legally dependant on the police protection remaining in force** until Social Services are in a position to seek a court order or make voluntary arrangements for the child's care.

Offences Relating to Police Protection

Section 49 Children Act 1989 makes it an offence to abduct a child or cause a child to run away who is in care, who is the subject of an EPO or who is under police protection. This applies to any person including a person who has parental responsibility for that child.

Suitable Accommodation

When the decision is taken to place a child in police protection and remove that child, the accommodation the child is taken to must be provided by or on behalf of the local authority. This would usually mean local authority accommodation where it exists, a registered children's home or foster care. The social worker dealing with the case must consult with the Social Services Duty/On-Call Manager for authority to accommodate the child (Note - Ceredigion currently has no on-call manager provision).

However, if the Designated Officer and Social Services consider it appropriate, the child may be placed with relatives or other appropriate carers. Where this is being considered, scrutiny of police and agency systems must be made in respect of the proposed carers and any other persons within the premises. Checks can include, but are not limited to, PNC, PND, ViSOR, intelligence databases, Child

Protection Register, Social Services records. The Designated Officer must be satisfied that arrangements with relatives or other proposed carers does not place the child at further risk.

A police station is *not* considered to be suitable accommodation and a child in police protection should only be taken to a police station as a last resort, such as a lack of immediately available local authority accommodation, and then only for a short period. If this is unavoidable, it is necessary to ensure that the child is physically safe and comfortable; has access to food and drink; has access to toilet and washing facilities; and is supervised at all times.

Social Services

Section 76, Social Services and Well-being (Wales) Act 2014 provides that a local authority must provide accommodation for any child in need within their area who appears to them to require accommodation as a result of - there being no person who has parental responsibility for him; his being lost or having been abandoned; or the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

Section 77, Social Services and Well-being (Wales) Act 2014 provides that a local authority must receive and provide accommodation for children in police protection whom they are requested to receive under Section 46. Notwithstanding this statutory obligation, the out-of-hours emergency social worker must consult with the on-call manager for the relevant Social Services area to obtain authority to accommodate the child (currently Carms/Pembs/Powys only). During office hours, the Duty Manager must be consulted.

Once a local authority has been informed by the police that a child is in police protection, Section 47 of the Children Act 1989 requires enquiries to be made to decide whether or not action needs to be taken to safeguard or promote the child's welfare.

Social Services should not seek for police to exercise their Section 46 power unless the risk to the child is immediate. In emergency situations, Social Services should be seeking an Emergency Protection Order from the Court under Section 44 of the Act, or exploring other safeguarding options.

Where a child has been placed by a local authority in accommodation in the area of a second local authority, and Section 46 Police Protection is invoked, both the originating local authority and the local authority where the child is found have a duty to safeguard that child. Immediate accommodation is the responsibility of the local authority where the child is found. Subsequent discussion should involve both local authorities and police regarding ongoing accommodation and safeguarding needs for the child.

Contact Numbers

	In Hours	Out of Hours
Carmarthenshire	01554 742322	0300 333 2222

Ceredigion	01545 574027	0300 4563554
Pembrokeshire	01437 776444	0300 333 2222
Powys	01597 827666	0845 0544847

More Information

All Wales Child Protection Procedures 2008

Working Together to Safeguard People Volume 5 – Handling Individual Cases to Protect Children at Risk (*Social Services and Well-being (Wales) Act 2014 Codes of Practice*)

College of Policing Authorised Professional Practice – Police Protection:

<https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/child-abuse/concern-for-a-child/#police-protection>

Home Office Circular 017/2008: The duties and powers of the police under The Children Act 1989