

**Article 39**

# ADVOCACY CLINIC

*The independent reviewing officer (IRO): statutory functions, duties and powers*

Monday 10 July 2023, 11am-12:30pm on Zoom

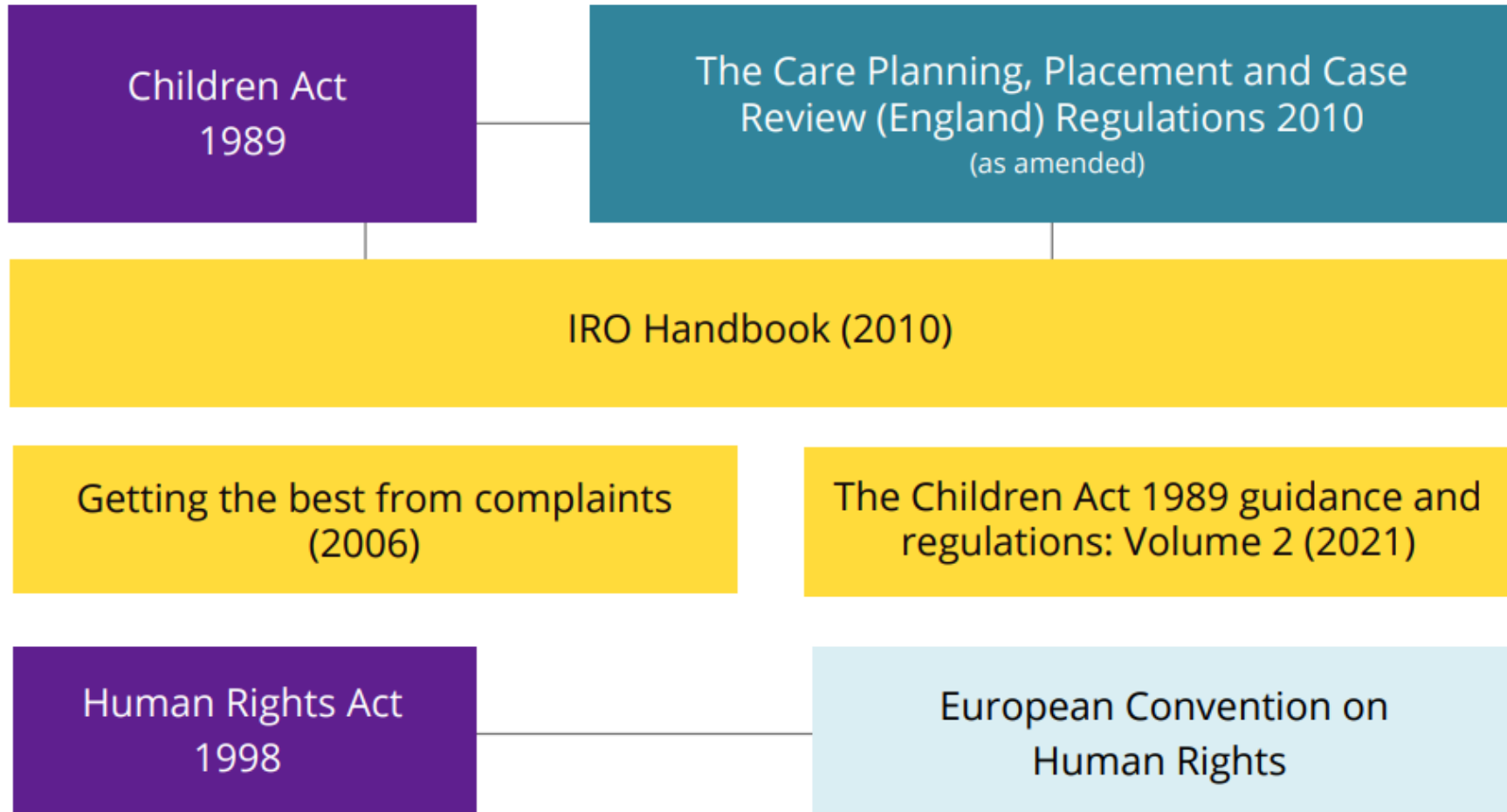
For members of Children and Young People's Advocates Network

## The IRO → a fundamental safeguard

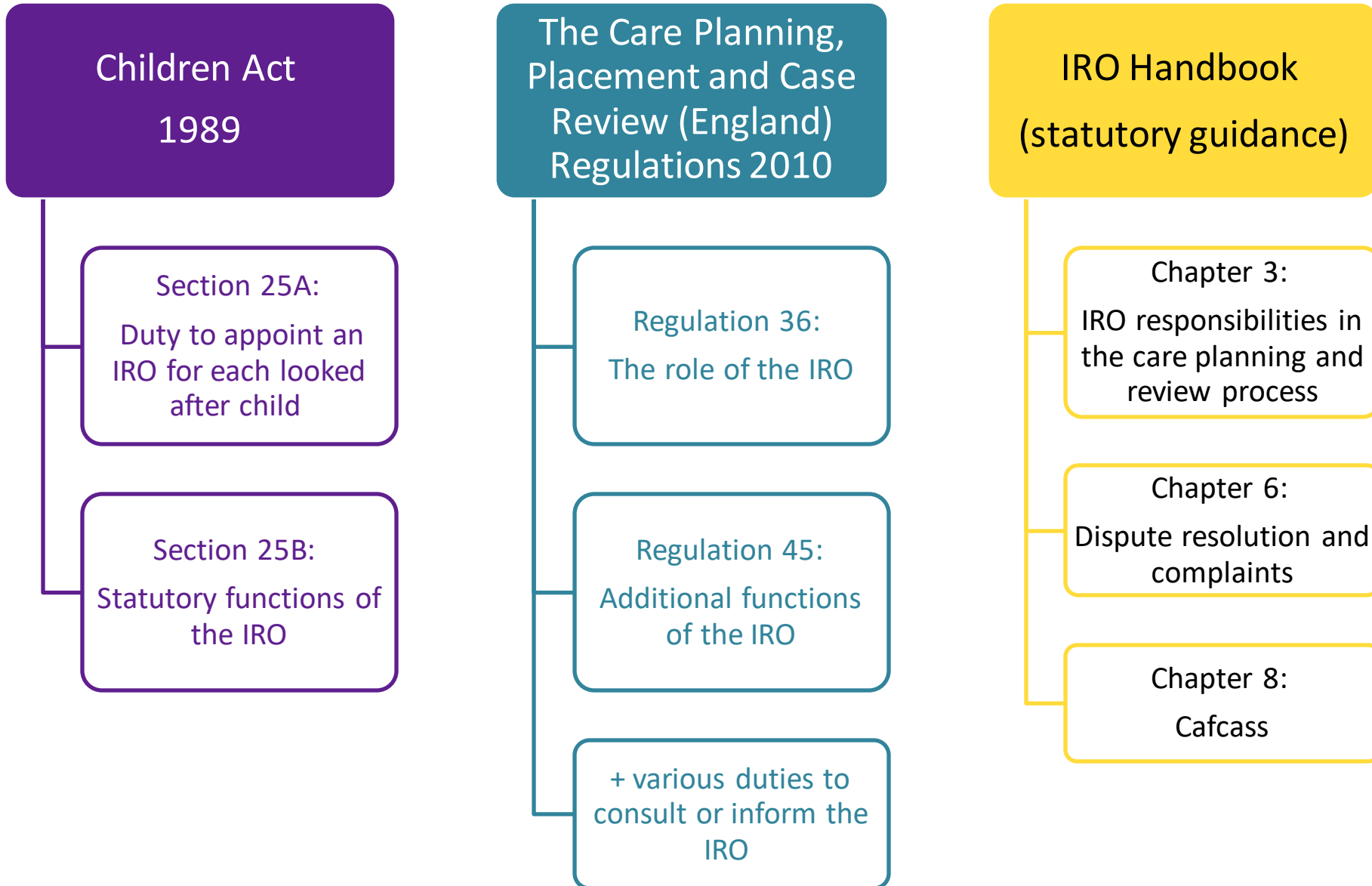
The IRO:

- **Monitors local authority's performance in meeting its statutory duties to each looked after child** (including preventing drift);
- **Chairs looked after children's review meetings, and ensures care plans reflect children's current needs;**
- **Ensures children's wishes and feelings inform care planning;**
- **Ensures children are aware of their rights to:**
  - make complaints
  - get help from an advocate
  - access legal advice
  - bring proceedings under the Children Act 1989;
- **Challenges and holds the local authority accountable for failures to meet its legal responsibilities, including failure to protect the human rights of children.**

# OVERVIEW OF THE LAW



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# STATUTORY FUNCTIONS, DUTIES & POWERS OF THE IRO

## STATUTORY FUNCTIONS

The IRO must:

### Children Act 1989 (section 25B(1))

- Monitor the local authority's performance of their functions in relation to the child's case
- Participate in all reviews of the child's case
- Ensure that the child's wishes and feelings are ascertained and considered by the local authority
- Perform any functions specified in the \*regulations

### \*Regulation 45(1)-(2)

- Inform the child about their rights
- Help the child access legal advice and/or an advocate

## STATUTORY DUTIES

The IRO must:

### \*Regulation 36(1)

- Attend and chair review meetings
- Speak to the child in private before review meetings
- Ensure the wishes and feelings of the child's parents or other persons with parental responsibility are ascertained and considered
- Ensure the review meeting is conducted in accordance with the law and take action if the law is not being followed
- Identify who is responsible for implementing agreed decisions following a review meeting and take action if these are not implemented

## STATUTORY POWERS

The IRO has the power to:

### \*Regulation 33(3)(a)

- Request a review of the child's case outside of the minimum statutory timescales

### \*Regulation 45(3)

- Must consider referral to Cafcass if the local authority fails or breaches their duties in any significant way and it "has not been addressed to the satisfaction of the IRO within a reasonable period of time"

### IRO Handbook (paragraphs 6.1-6.7)

- Initiate the local dispute resolution process, if an issue is "not resolved in a timescale that is appropriate to the child's needs"

### IRO Handbook (paragraph 6.9)

- Make a complaint on behalf of a child who does not have the ability or understanding to do so.

\*The Care Planning, Placement and Case Review (England) Regulations 2010

# HOLDING LOCAL AUTHORITIES TO ACCOUNT

- Are decisions reached during the last review being implemented?
- Is there a need for another review (outside of the minimum statutory timescales?)
- Have the child's circumstances changed?
- Delays or drift?

Despite attempts at resolution, the matter is not resolved in a timescale that is appropriate to the child's needs.

## Protecting children's rights and holding local authorities to account: IRO duties and powers

### Monitoring function

Monitoring the individual child's case on an ongoing basis  
(section 25B Children Act 1989)

Monitoring local authority's performance as a corporate parent for all looked after children and alerting senior staff to patterns of poor practice  
(para 3.81 IRO handbook)

Escalating concerns to senior staff within the local authority

Initiating the local dispute resolution process

Making a referral to Cafcass  
(reg 45.3 of the 2010 Regulations)

Making a complaint under the Children Act 1989 procedure  
(*'sufficient interest in the child's welfare'* - section 26(3)(e) Children Act 1989 and para 6.9 IRO handbook)

\*Children who do not have the ability or understanding to make a complaints themselves.

# KEY MESSAGES: IRO HANDBOOK

## The IRO:

- Quality assures the care planning and review process for each child;
- Ensures the child's current wishes and feelings are given full consideration;
- Ensures that all actions of the local authority are consistent with the law;
- Ensures children and young people are aware of their rights;
- Acts as a safeguard to prevent any 'drift' and sets remedial actions and timescales where needed;
- Resolves problems and escalates concerns;
- Takes actions to protect children's human rights and hold the local authority to account.

## INDEPENDENT ADVOCACY FOR CHILDREN AND YOUNG PEOPLE

*When meeting with the child before every review, the IRO is responsible for making sure that the child understands how an advocate could help and his/her entitlement to one. Advocacy is an option available to children whenever they want such support and not just when they want to make a formal complaint (...).*

*Every child has the right to be supported by an advocate. The local authority must have a system in place to provide written, age appropriate information to each looked after child about the function and availability of an advocate and how to request one (...).*

Paragraph 3.14, IRO Handbook

# NEW RESOURCE – LAW MAP: Independent reviewing officers

## ‘Law maps’ for advocates

Our ‘law maps’ offer bite-sized, accessible information about the law in the context of specific situations that children and young people bring to their advocates and children’s rights officers.

Article 39 Supporting homeless children aged 16 and 17	Article 39 Visits by and conduct of social workers	Article 39 Attending a loved one's funeral
Article 39 Deprivation of liberty	Article 39 Sanctions and punishments in secure settings	Article 39 Special guardianship orders
Article 39 Independent reviewing officers	Article 39 COMING NEXT: Challenging unwanted moves	Article 39 COMING NEXT: Personal advisers

### LAW MAP: Article 39 Independent reviewing officers

Case studies:

Aaron is 10 years-old and has been in care since the age of five. He has lived with his foster carers for over three years now; he is happy and settled. Aaron's foster carer, Jo, contacts your advocacy service because she's not received an answer from Aaron's social worker about why his fortnightly time with his younger siblings was cancelled again. Jo tells you that Aaron was especially upset the last time it happened as it was his sister's birthday and he spent ages making a card for her. He thinks his sister will think he's forgotten about her. Jo doesn't know what to do as the social worker won't respond to her emails or calls.

Suki is 17 and is looked after under section 20 of the Children Act 1989. At her last review meeting, various actions were agreed to make sure Suki gets her university applications in on time. It was also agreed she'd attend a few university open days and explore the local areas to see which she likes the most. Suki asked if her personal adviser could attend these with her, as her grandma can't travel due to poor health. It's been two months and none of the agreed actions have been implemented.

Jess is 15 and she's lived in her current children's homes for over two years. She's currently working through her GCSEs. Jess has been told by her social worker that she will be moving in a matter of weeks as it's 'standard practice' for children in care her age to move to semi-independent accommodation as part of 'learning independent living skills'. This is the first Jess is hearing about it, and she's devastated and scared. At her last review meeting, about four months ago, there was no mention of her moving.

Most relevant legislation and government guidance:

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graph TD; CA[Children Act 1989] --- CPCR[The Care Planning, Placement and Case Review (England) Regulations 2010 (as amended)]; CA --- IRO[IRO Handbook (2010)]; CPCR --- IRO; IRO --- GB[Getting the best from complaints (2006)]; IRO --- CAG[The Children Act 1989 guidance and regulations: Volume 2 (2021)]; CA --- HRA[Human Rights Act 1998]; CPCR --- ECHR[European Convention on Human Rights];
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Key:

- Primary legislation
- Secondary legislation
- Statutory guidance
- International (human rights) law

Visit: <https://article39.org.uk/resources-for-advocates/law-maps-for-advocates/>



# ADDITIONAL RESOURCES

Children's rights legal digest: [June 2023 issue](#)

*A & S (Children) v Lancashire County Council* [2012] EWHC 1689 (Fam) (21 June 2012)

*The High Court found the IRO:*

- Failed to identify that the children's human rights had been and were being violated;
- Failed to take effective action to ensure that the local authority implemented the recommendations arising from the children's care review meetings;
- Failed to refer the circumstances of the children to Cafcass.

*"The role of the Independent Reviewing Officer can be compared to that of the Safety Officer, or Quality Control Supervisor within the local authority organisation (...)"* (Paragraph 13 of the judgment)



Your independent reviewing officer – information for children and young people

<https://rights4children.org.uk/your-independent-reviewing-officer/>

# CASE STUDY ANALYSIS

Please note: the information we provide is general and does not constitute legal advice.

## CASE STUDY 1, AARON

- Aaron is 10 years-old and has been in care since the age of five. He has lived with his foster carers for over three years now; he is happy and settled.
- Aaron's foster carer, Jo, contacts your advocacy service because she's not received an answer from Aaron's social worker about why his fortnightly time with his younger siblings was cancelled again.
- Jo tells you that Aaron was especially upset the last time it happened as it was his sister's birthday and he spent ages making a card for her. He thinks his sister will think he's forgotten about her.
- Jo doesn't know what to do as the social worker won't respond to her emails or calls.

# STATUTORY FUNCTIONS, DUTIES & POWERS OF THE IRO

## Key issues and concerns:

- Duties towards Aaron as a looked after child not being met
- Repeatedly missing out on family time
- Impact on family relationships and Aaron's welfare and mental health
- Social worker not responding

## The IRO:

- Monitors the quality and implementation of the child's care plan (s25B(1)(a) Children Act 1989, para 2.10 IRO Handbook)
- Attends and chairs care review meetings (s25B(1)(b) Children Act 1989, \*reg 36(1)(a))
- Ascertains the child's wishes and feelings and ensures these are considered by the local authority (s25B(1)(c) Children Act 1989, \*reg 36(1)(b))
- Ensures arrangements for seeing and spending time with family and 'other connected persons' are considered at the review (para 3.38 IRO Handbook, \*Schedule 7)
- Prepares a written record of the review, including all recommendations and agreed actions (para 3.69 IRO Handbook)
- Identifies the person responsible for implementing decisions following a review, and alerts the accountable manager to any failure to take proper steps (\*reg 36(1)(d), para 3.73 IRO Handbook)
- Informs the child about their right to make complaints and get help from an advocate (\*reg 45(1)(b))

\*The Care Planning, Placement and Case Review (England) Regulations 2010

# STATUTORY FUNCTIONS, DUTIES & POWERS OF THE IRO

## The IRO:

- Can request a review of the child's case outside of the statutory timescales (\*reg 33(3)(a))
- Resolves issues informally with the social worker or the social worker's managers (para 6.1. IRO Handbook)
- Can make a complaint on behalf of a child who does not have the ability or understanding to do so themselves (para 6.9 IRO Handbook)
- Can initiate the local dispute resolution process (para 6.1-6.7) / must consider a referral to Cafcass (\*reg 45(3))
- Identifies and alerts senior local authority managers to patterns of poor practice (para 2.13 IRO Handbook)

\*The Care Planning, Placement and Case Review (England) Regulations 2010

## CASE STUDY 2, SUKI

- Suki is 17 and is looked after under section 20 of the Children Act 1989. She lives with her grandmother.
- At her last review meeting, various actions were agreed to make sure Suki gets her university applications in on time. It was also agreed she'd attend a few university open days and explore the local areas to see which she likes the most.
- Suki asked if her personal adviser could attend these with her, as her grandma can't travel due to poor health.
- It's been two months and none of the agreed actions have been implemented.

# STATUTORY FUNCTIONS, DUTIES & POWERS OF THE IRO

## Key issues and concerns:

- Duties towards Suki as a looked after child not being met
- Actions agreed at the last review have not been implemented
- Delays and drift
- Potential impact on education and current impact on Suki's welfare and mental health

## The IRO:

- The IRO should ensure that the review addresses:
  - Arrangements for the child's educational needs, progress and development
  - Required actions to ensure that the child's educational needs are met and not neglected
  - Whether arrangements to provide advice, support and assistance continue to be appropriate and understood by the child
  - Required arrangements for when the child will no longer be looked after, to properly prepare the child for this significant move
- The IRO is responsible for setting any remedial timescales if actions have not been taken and there is a risk of drift.

Schedule 7 of The Care Planning, Placement and Case Review (England) Regulations 2010; paragraphs 3.38-3.39 IRO Handbook

## CASE STUDY 3, JESS

- Jess is 15 and she's lived in her current children's homes for over two years. She's currently working through her GCSEs.
- Jess has been told by her social worker that she will be moving in a matter of weeks as it's 'standard practice' for children in care her age to move to semi-independent accommodation as part of 'learning independent living skills'.
- This is the first Jess is hearing about it, and she's devastated and scared. At her last review meeting, about four months ago, there was no mention of her moving.



# STATUTORY FUNCTIONS, DUTIES & POWERS OF THE IRO

## Key issues and concerns:

- Duties towards Jess as a looked after child not being met
- Disruption to stability.
- Disruption to education.
- Imminent move.
- Blanket decision – no consideration of individual needs, wishes and feelings.
- Impact on Jess's welfare and mental health.

## The local authority must consult the IRO:

- About any changes relating to where the child lives which would disrupt their education while they are in KS4 (\*reg. 10(2)(d)).

## The local authority must inform the IRO:

- Before making any decisions about where the child should live (\*reg 9(1)(b)(ii)).
- In writing, before any changes are made to where a child lives, or within five working days in emergency situations (\*reg 13(2)(i)).
- Before deciding that a child should leave their current accommodation (\*reg 14(2)(b); few exceptions listed in \*reg 14(5)). If the move is necessary to keep the child or others safe, the IRO must be informed as soon as reasonably practicable (\*reg 14(3)(b)).
- Before placing a child in 'other arrangements' under section 22C(D) Children Act 1989 (\*reg 27; please note the important changes introduced by \*reg 27A when placing a child under 15 in other arrangements).

\*The Care Planning, Placement and Case Review (England) Regulations 2010

# STATUTORY FUNCTIONS, DUTIES & POWERS OF THE IRO

## The IRO must:

- Ensure the child's wishes and feelings are ascertained and considered and consider whether to request a review of the child's case, when consulted or informed (\*reg 45(4)).

## The IRO should:

- Make sure the child understands what is being proposed (para.3.78 IRO Handbook).
- Request that a placement move is stopped ('frozen') and initiate the local dispute resolution process where the planned move, in the IRO's view, is unlikely to safeguard and promote the child's welfare (para 3.79 IRO Handbook).
- Advise the child about their statutory right to make a complaint and get help from an advocate and/or a lawyer (para 3.79 IRO Handbook, \*reg 45(1)(b), (2)).

\*The Care Planning, Placement and Case Review (England) Regulations 2010

# ON YOUR SIDE: CHILDREN'S RIGHTS ADVICE SERVICE



**Straightforward information about the law** to help children and young people in England.

This includes children and young people who are in the care of an English local authority but live in Scotland or Wales.

Visit: [article39.org.uk/on-your-side/](https://article39.org.uk/on-your-side/)

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