

Summary: Intervention & Options		
Department /Agency: Ministry of Justice	Title: Impact Assessment of the Legislative Reform to Reporting Restrictions Governing Family Courts	
Stage: Bill introduction	Version: Final	Date: 16 November 2009
Related Publications: Confidence and Confidentiality: Openness in family courts – a new approach (cm7131); Family Justice in Views (cm7502).		

Available to view or download at: <http://www.justice.gov.uk>

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What is the problem under consideration? Why is government intervention necessary? New rules came into force on 27 April 2009 allowing for the first time the right of attendance for accredited members of the media to the county courts and the High Court. However existing statutory reporting restrictions remain in force, which means that the media can only report limited information about proceedings, with the existing system of reporting restrictions relating to family proceedings complicated and unclear. Government intervention is necessary because changes can only be made through secondary or primary legislation.

What are the policy objectives and the intended effects? To deliver a more effective, transparent and accountable family justice system. This includes increased public confidence in the family justice system; giving vulnerable adults and children the best possible protection; a more consistent, comprehensive and transparent statutory framework governing the reporting of family cases; significantly improving the visibility of justice for families from a reformed justice system; providing accredited members of the media with the ability to be able to report more widely about the proceedings they attend, but at the same time providing indefinite anonymity for the adults and parties involved.

What policy options have been considered? The following options are assessed against the base case “do-nothing”:

- *Option 0* - Base Case (“Do Nothing”)
- *Option 1* - Secondary legislation (rules of court) to change the reporting restrictions framework
- *Option 2* - Primary legislation to provide new framework increasing the amount and type of information the media can report

Option 2 is preferred on the grounds of efficacy and efficiency. Option 1 does not deliver the objectives of the policy as it can only deliver in part and cannot remove inconsistencies in existing statutes.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The impact of any preferred option(s) will be reviewed 18 months after the Bill comes into force.

Ministerial Sign-off For Bill Introduction Stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (i) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy and, (ii) the benefits justify the costs.

Signed by the responsible Minister:

..... Date:

Summary: Analysis & Evidence	
Policy Option: 1	Description: Use secondary legislation (rules of court) to change the reporting restrictions framework

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’ <i>Evidence Base section clarifies monetised costs per case and per body. Aggregate cost figure would reflect range of cumulative uncertain assumptions and other unknown factors. Would be subject to excessively large range and hence be of relatively limited use.</i>
	One-off	Yrs	
	£		
	Average Annual Cost		
	£		
Total Cost (PV)			
Other key non-monetised costs by ‘main affected groups’ Intangible negative value to families from loss of privacy. Increased judicial system costs. Costs to families, local authorities, CAFCASS and the media from increased volume of court proceedings. Initial public awareness costs. Ongoing CAFCASS briefing costs.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by ‘main affected groups’
	One-off	Yrs	
	£		
	Average Annual Benefit		
	£		
Total Benefit (PV)			
Other key non-monetised benefits by ‘main affected groups’ Benefits to society from greater transparency, reflected in part by benefits to media from greater reporting.			

Key Assumptions/Sensitivities/Risks Key assumption is that intangible benefit to society of greater transparency outweighs intangible negative value to families from loss of privacy plus increased cost of operating more transparent arrangements. Some factors remain unknown such as impact on court room behaviour and dynamics.

Price Base Year	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate) -
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What is the geographic coverage of the policy/option?	England and Wales				
On what date will the policy be implemented?	Not Known				
Which organisation(s) will enforce the policy?	Courts				
What is the total annual cost of enforcement for these organisations?	Included in NPV				
Does enforcement comply with Hampton principles?	N/A				
Will implementation go beyond minimum EU requirements?	N/A				
What is the value of the proposed offsetting measure per year?	£ Nil				
What is the value of changes in greenhouse gas emissions?	£ Nil				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro</td> <td style="width: 25%; text-align: center;">Small</td> <td style="width: 25%; text-align: center;">Medium</td> <td style="width: 25%; text-align: center;">Large</td> </tr> </table>	Micro	Small	Medium	Large
Micro	Small	Medium	Large		
Are any of these organisations exempt?	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> </tr> </table>	No	No	No	No
No	No	No	No		

Impact on Admin Burdens Baseline (2005 Prices)				(Increase –
Increase	£	Decrease	£	Net £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Policy Option: 2	Description: Primary legislation to provide new framework increasing the amount and type of information the media can report
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Evidence Base section clarifies monetised costs per case and per body. Aggregate cost figure would reflect range of cumulative uncertain assumptions and other unknown factors. Would be subject to excessively large range and hence be of relatively limited use.
	One-off	Yrs	
	£		
	Average Annual Cost		
	£		Total Cost (PV)
Other key non-monetised costs by 'main affected groups' Intangible negative value to families from loss of privacy is less than for Option 1 as gains from more anonymity outweigh losses from wider reporting. Other costs all comparable to Option 1, i.e. increased judicial system costs; costs to families, local authorities, CAFCASS and the media from increased volume of court proceedings; initial public awareness costs; ongoing CAFCASS briefing costs.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£		
	Average Annual Benefit		
	£		Total Benefit (PV)
Other key non-monetised benefits by 'main affected groups'. As for Option 1 but greater benefits to the media and to society as wider reporting, albeit with greater anonymity, provides greater transparency.			

Key Assumptions/Sensitivities/Risks: As for Option 1 but Option 2 is assumed to be preferable to Option 1 as the increased benefit from greater transparency under Option 2 is considered to outweigh any increased loss of privacy under Option 2 (which only exists if we assume the benefit to families of increased anonymity is outweighed by the negative value to families of potentially wider and deeper reporting)..

Price Base Year	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
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What is the geographic coverage of the policy/option?	England and Wales
On what date will the policy be implemented?	Not known
Which organisation(s) will enforce the policy?	Courts
What is the total annual cost of enforcement for these organisations?	Included in NPV
Does enforcement comply with Hampton principles?	N/A
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£ N/A
What is the value of changes in greenhouse gas emissions?	£ N/A
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation	Micro Small Medium Large
Are any of these organisations exempt?	No No No No

Impact on Admin Burdens Baseline (2005 Prices)				(Increase -
Increase	£	Decrease of	£	Net Impact
				£

Key: **Annual costs and benefits: Constant Prices (Net) Present Value**

1. Scope of the Impact Assessment

- 1.1 This Impact Assessment (IA) updates the consultation stage IA which was published in December 2008 for the provisions on media attendance at family courts and new disclosure rules.¹ The IA accompanies the draft clauses on reporting restrictions governing family proceedings in the ‘*Children, Schools and Families Bill*. It assesses the social costs and benefits of allowing the media to report more widely. It follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.
- 1.2 The Government’s overall package of changes to family proceedings was set out in the December 2008 response paper. These were intended to make family proceedings more open and transparent by proposing :
- Media attendance at family proceedings across all tiers of court (except adoption proceedings);
 - Revised provisions for the disclosure of information in children cases, to make it easier for parties to seek the help they need;
 - A new legislative framework for reporting restrictions.
- 1.3 New court rules took effect on 27 April 2009 that provide for media attendance at most family proceedings across all tiers of court (except, for the time being, placement and adoption proceedings) and at financial dispute resolution hearings. They also revised provisions for disclosure of information in children’s cases, to make it easier for parties to seek the help they need. *The Family Proceedings (Amendment) (No.2) Rules 2009* covers the High Courts and County Courts, while *The Family Proceedings Courts (Miscellaneous Amendments) Rules 2009* deals with the Magistrates’ Courts. There is an accompanying Practice Direction for each set of rules which was issued by the President of the Family Division. What the rules did not change was the reporting restrictions framework that governs the reporting of family cases by the media, the primary focus of this IA and accompanying legislation proposals.

Objectives of Proposals

- 1.4 The Government’s family transparency proposals are designed to achieve the following objectives :
- Promote a culture of openness and accountability in the family justice system;
 - Improve public confidence in the family justice system;

¹ <http://www.justice.gov.uk/consultations/docs/family-justice-in-view-ia.pdf>.

- Improve understanding by the general public and by families involved in proceedings of the decisions the court make; and,
- Protect the welfare and best interest of children and vulnerable adults involved.

1.5 The proposals will only apply to England and Wales. Family law and procedure is a devolved matter for Scotland and Northern Ireland.

Proposed Policies

- 1.6 The two potential policy options that have been proposed to achieve the above objectives would be in the form of either:
- *Secondary legislation* (court rules) to change the reporting restrictions framework: It may be possible to provide clarity on the issue in secondary legislation using existing rule-making powers in order to remove some of the restrictions on the publication of information in children cases only. The provision would allow accredited media representatives to report the substance of cases they have attended.
 - *Primary legislation* to provide a new framework increasing the amount and type of information that the media can report. The intention would be to provide a single, consistent reporting regime for proceedings within scope, covering all three tiers of court and all types of publication. The underlying intention is to allow the media to report the essential substance of a case but prohibit publication of any matter that may lead to identification of individuals as someone concerned, or having been concerned, in the proceedings in question.

Affected Groups and Sectors

- 1.7 The following sectors are likely to be affected by the proposals :
- *Family law firms and legal advice sector*: The proposed changes are likely to have an impact on lawyers and barristers representing clients who are involved in family proceedings. The legal profession would need to adapt to the new reporting restrictions framework and would be required to, in some but not all cases, provide oral representation on behalf of their clients if any objections need to be made about the reporting of the case by the media.
 - *Judiciary*: The Ministry of Justice (MoJ) would be required to work with the Judicial Studies Board and the President of the Family Division to update current training materials to ensure that when the new legislation and rules come into effect the judiciary are aware of the changes. Extra judicial time will be needed to hear representations from parties and the media.
 - *Children and Families*: The proposals would mean that some details of the proceedings they are involved in could be reported in detail which may

include sensitive personal information.² However in phase 1 sensitive information will be included in a banned list. It is likely therefore that it will be necessary for the MoJ to produce guidance leaflets for court users to make sure they understand what the changes will mean for them. This will take the form of public information including the distribution of posters and providing leaflets in court waiting rooms for those involved in family proceedings.

- *Local authorities:* There are currently 152 local authorities in England and Wales.³ A number of these local authorities may be party to proceedings in public law cases such as care proceedings where the state is acting in the best interest of the child. The new legislation changes will need to be filtered down to all these local authorities to make sure that they are aware of the changes. It is hoped that this will be done by working closely with the Local Government Association and Association of Directors of Children's Services using them as a hub to cascade information down to their members.
- *Press:* There are currently 1300 local and regional newspapers in England and Wales and 11 daily national newspapers.⁴ The changes in legislation would need to be explained clearly, so it is likely guidance specifically for the media would need to be produced.
- *Court staff:* The press reporting family cases may have an impact on court staff who may, for example, be asked to prepare the documents which the media had been allowed access to. This will not be a new burden on the courts as the media or any other non-party can already make an application under rule 11.2(1)(b) of the Family Proceedings Rules to view documents. There is also a risk that court staff will need to carry out other associated tasks with judges hearing more direction hearings to decide whether information can be reported by the media. In order to prepare court staff the Ministry of Justice would be required to work closely with colleagues in the HMCS communications team to update current internal guidance for dealing with the media in criminal and youth courts and updating the current section on the family courts.
- *CAFCASS and CAFCASS Cymru Guardians:* In cases where a guardian is appointed to look after the best interest of the child, he or she will be required to explain to the child that the media may be present at proceedings and that the media will be allowed to report certain information. This is something that Cafcass officers should be doing as a result of the rules changes that were implemented in April 2009 to allow accredited members of the media to attend most family proceedings. The MoJ would be required to work closely with CAFCASS and CAFCASS

² It is also important to note that the media will not be attending and reporting in all cases. Therefore there may be cases where the media are not in attendance and there is not reporting of the case.

³ Source: http://www.direct.gov.uk/en/DI1/Directories/Localcouncils/AToZOfLocalCouncils/DG_A-Z_LG.

⁴ Source: Newspaper Society intelligence unit; BMRB/TGI - <http://www.newspapersoc.org.uk/Default.aspx?page=9>.

Cymru to produce child friendly language leaflets to explain what the new changes would mean for them.

Consultations

- 1.8 The MoJ has consulted widely on the issue of openness of family courts and the assessment of these consultations is set out in full at Annex A.

2. Problem under Consideration

- 2.1 The change in the media attendance rules was the first part of the reforms set out to increase public awareness and confidence. It allowed for the first time the right of attendance to accredited members of the media to the county courts and the High Court. However existing statutory reporting restrictions currently remain in force, which means that the media can only report limited information about proceedings. The current reporting restriction framework will need to be revised to help complete these reforms, for the purpose of meeting the original aims and objectives of improving the openness of the family courts through greater reporting.
- 2.2 The recent case of *Independent News and Media & Ors v A* (12 November 2009) illustrates that other areas of the justice system (Court of Protection) is moving to a more greater accountable and transparent justice system. The judgment also sets out that [the legitimate concerns of the applicant under Article 8 and the legitimate aspirations of the media under Article 10 could both be met and that accordingly some opening up of the proceedings was justified and that this could be done consistently with the best interests of those concerned.](#)
- 2.3 The legislation that exists in its current form will need to be simplified. This would ensure that a single framework is applicable to all levels of court, ensuring that it is accessible and easily understood and covers gaps or lifts some restrictions in the current statutory framework.
- 2.4 There are at least 10 current statutory provisions governing what the media may or may not report in different family proceedings. These restrictions are neither comprehensive nor particularly comprehensible. In some cases the current provisions overlap somewhat, in other cases there is no provision at all. For example Human Rights or Data Protection principles, or principles of common law, may give rise to some restrictions.⁵
- 2.5 Despite the media being allowed to attend hearings, they do not have the incentive to do so as they are not able to report any substance. If they are to report stories, they have to apply on a case-by-case basis to have the reporting restrictions lifted or are at risk of being in contempt of court.

⁵ For the list of statutes and other restrictions, see Annex B of Confidence and Confidentiality: Improving Transparency and Privacy in Family Courts [CM6886] published in July 2006

- 2.6 The new proposed legislative framework would allow for greater reporting of family proceedings, through an increase in the type and amount of information the media are able to report. This is in line with the initial objective for the media to be allowed to report more widely about family proceedings they attend than they are able to do now.

3. Cost Benefit Analysis

- 3.1 This section sets out some potential costs and benefits of introducing an overall package of changes to make family proceedings more open and transparent. It discusses the approach to cost benefit analysis (CBA) adopted; the costs and benefits associated with each option, and; the risks, uncertainties and assumptions applying to the assessment.

Analytical Principles

- 3.2 The IA process aims to identify as far as possible the impacts of government proposals on society. A critical part of the process is to undertake a CBA of the proposals. CBA assesses whether the government's proposals would deliver a positive net impact to society, accounting for economic, social, distributional and environmental considerations amongst others. The IA process should not be confused with a *financial appraisal*, which is focused more narrowly on assessing how much resources government would save from certain proposals. The material contained in a financial appraisal would form a subset of the material contained in a CBA.
- 3.3 The CBA underpinning this IA rests on answering three basic questions:
- What is the “economic problem” that government is seeking to address that has led to the relevant market or sector not functioning properly?
 - What options are available to government to correct this problem?
 - Are the recommended solutions (options) likely to have the desired impact? To establish a strong case for government intervention, we must assess the costs and benefits of government involvement and show that the benefits are likely to justify the costs.
- 3.4 In addressing these questions, the IA has tried to identify as far as possible all impacts from society's perspectives, with the aim of understanding what the net social impact to society might be from the introduction of more open and transparent family courts.
- 3.5 It is worth mentioning that there are important aspects that cannot sensibly be monetised as the effects are intangible. These might be distributional impacts on certain groups (e.g. differential impacts on children's welfare) or some social impacts (e.g. better projection of a lawful society).
- 3.6 An important consideration for any cost benefit analysis is the relevant scope of the assessment. The scope of this IA is defined to include:
- **Impacts that fall within the physical geography of England and Wales.** This means that we have excluded any direct or indirect effects that may occur to people in Scotland, Northern Ireland, and beyond.
 - **Impacts that fall only on lawful members of society.** We have excluded any negative impacts and costs that may fall on those who do not comply with the law e.g. the disbenefits experienced by individuals as a result of being in prison. But we include the costs on the justice system of dealing with such individuals, including the costs of providing prison places.

- **Impacts that fall on present and future generations.** In line with the Green Book, the IA assesses the potential impacts of changes to reporting restrictions of all who may be affected by it including future generations.

Summary of Economic Framework and Analysis

- 3.7 From an economic standpoint the fundamental question is whether the current level of public awareness and transparency in these types of case is socially optimal. This is largely a distributional issue which relates to balancing families' rights to privacy, and the value they attach to those rights, against the benefits to society of greater transparency and public awareness of these cases, whilst also taking into account the change in resource costs from operating a more transparent court system.
- 3.8 It is important to acknowledge upfront that these key values and benefits are intangible and not marketed. On the costs side this IA does not place a figure on the value to families of retaining their privacy in court. On the benefits side the value of greater transparency might be reflected in part, but not wholly, in the price people are willing to pay to view, listen or read to related media stories. This has also not been quantified in this IA, and there might be wider unquantified benefits. For example greater transparency and awareness might lead to a reduction in cases coming to court if families observe what happens in court. Increased transparency and public scrutiny might affect the conduct of court hearings. Public confidence in the judicial system could also be affected.
- 3.9 We consider that the new rules which came into effect in 27 April 2009 in effect reflect the view that it would be better overall for society if the current balance between family privacy and public awareness was shifted in favour of increased public awareness. It would probably be prudent to regard this view as an economic assumption given the degree of evidence which exists in this area.
- 3.10 Nevertheless the economic rationale for moving in this direction also depends upon this gain not being outweighed by any increased resource costs of moving to the new position. In this instance there will be familiarisation and awareness costs. The costs of applying the new legal provisions in court might be higher than now. There might also be increased costs from an increased number of challenges and applications compared to now. The two proposed policy options differ somewhat in these regards, but this is the general framework within which they should be considered.

Base Case (“Option 0”)

General Description

- 3.11 The IA process requires that all options are assessed relative to a common “base case”, assumed in this IA to be “do nothing”. As the base case effectively is compared against itself its **net present value is zero**.
- 3.12 The existing system preventing publication of information relating to family proceedings is a mixture of the law of contempt and statutory criminal

offences. The system is complex and operates in different ways at different levels of court and at different proceedings.⁶ The main features are set out in Annex G.

- 3.13 The main implications of the current restrictions are first that the media may not have an incentive to attend hearings due to the stringent reporting restrictions. If they want these restrictions to be lifted in a particular case they would have to make an application to the courts.
- 3.14 Secondly maintaining the current position means that there will continue to be disaggregated reporting restrictions governing the reporting of family courts across different tiers of court and types of proceedings.
- 3.15 In effect the changes brought in by the Government on 27 April 2009 to allow accredited members of the media to attend most family proceedings would remain ineffective in achieving the Government's aim of allowing open justice, while still protecting the anonymity of the families involved. The current reporting restrictions framework may make it difficult for the wider public to understand the workings of the family courts, as currently the media can only report very limited information.

Option 1 – “Secondary Legislation”

General Description

- 3.16 **Introduce secondary legislation using existing rule-making powers (or enabling provisions) in s.40 (4) (aa) of the Matrimonial and Family Proceedings Act 1984 (“the 1984 Act”) and s.145(1) (ga) of the Magistrates’ Court Act 1980 (“the 1980 Act”).** This option would remove some of the restrictions on the publication of information provided by s12 of the Administration of Justice Act 1960 (AJA) and would provide for accredited media to report the substance of children cases they have attended.
- 3.17 The proposal would only address children cases affected by s12 (1)(a) AJA 1960. This is because the media are able to attend these proceedings by virtue of the changes to the *Family Proceedings Rules 1991* and *Family Proceedings Courts (Children Act 1989) Rules 1991* made in April 2009. Cases brought under the Adoption and Children Act 2002 therefore are not included in this option.
- 3.18 There would be no clarification of the current statutory framework. The anonymity rules surrounding the identification of individuals involved would be the same as in the base case. There would also be no scope or vires to use rules of court to provide families with stronger anonymity so that their interests could be balanced better against allowing the media to report more widely.

Proceedings

- 3.19 The rules would only apply to proceedings under s12(1)(a) AJA affecting children, except for *Adoption and Children Act 2002* proceedings. That is, those brought under the Children Act 1989; or relating to the exercise of the

⁶ The rules and provisions providing for reporting restrictions are set out in **Annex B**.

inherent jurisdiction of the High Court with respect to minors; or those otherwise relating wholly or mainly with the maintenance or upbringing of a minor – i.e. ‘children’s proceedings’.

Accredited media representatives

3.20 The rules would only apply to media representatives who are duly accredited representatives of news gathering and reporting organisations and are attending the proceedings in accordance with Rule 10.28(3)(f) of the *Family Proceedings Rules 1991* and Rule 16A(1)(f) of the *Family Proceedings Courts (Children Act 1989) Rules 1991*. Rules changes could allow for the sharing amongst members of the media of reports from court attendance. This is to cover industry practice whereby the Press Association or other accredited media court reporters provide a copy to third party newspapers or other media for publication by them.

Protecting identities

3.21 The scope of section 12 of the AJA does not enable any provision relating to anonymity to be included in the rules relating to the reporting of substance. However existing legislation will continue to apply, in particular:

- Section 97(2) of the *Children Act 1989* – for the duration of proceedings
- Section 39(1) of the *Children and Young Persons Act 1933* – this could be used to make anonymity provisions beyond the conclusion of proceedings; but it is likely that people will argue that it only lasts during the currency of proceedings.

3.22 In addition to the above this proposal would mean that the media organisations would need to operate a voluntary ban on reporting identity, supported by amendments to the Press Complaints Commission (PCC) *Code of Practice*. Making the rule changes without making provisions to protect the identity of children once proceedings have ended would mean that if no order was made by the court to protect identity the media would be able report the substance and the identity of the child involved. This is not the intention and objective of the Government making changes to the current reporting restrictions framework.

Contempt

3.23 The proposed change of rules would make it no longer a contempt of court to publish the substance of proceedings listed under s12(1)(a) AJA and within the scope of the proposed rules. Breaches of any other restriction would, of course, remain a contempt of court or a criminal offence according to the provision in question.

Costs of Option 1

3.24 Although the main types of possible anticipated costs have been identified below it is important to recognise that the assessment of their individual significance reflects a number of assumptions and is subject to much

uncertainty. In practice some elements might turn out to be less costly than anticipated, and vice versa.

- Costs to Families

- 3.25 Families involved in court proceedings may place a considerable negative value on the proposed changes associated with their loss of privacy from the media being able to report the details of 'private' family proceedings. These would take the form of intangible costs. The anonymity rules would remain unchanged despite the reporting restrictions being relaxed so automatic anonymity would not be provided. Families seeking to challenge the reporting of substance of their cases would incur the financial costs outlined below but there still remains the possibility that they may not succeed in getting a desired result. With no scope or legal vires to introduce stronger anonymity provisions via rules of court for the children and families involved, other than a proposed amendment to the Press Complaints Commission Code of Practice (which is voluntary code of practice), the negative value placed on this loss of anonymity may be significant to those involved.
- 3.26 There is also the possibility that additional transparency may make families more reluctant to use the court process as a result of the policy change. If this resulted in conflicts not being resolved then there might be adverse implications for families.
- 3.27 The financial costs mentioned above relate to legal representation costs to families in bringing forward proceedings to challenge judges' discretionary decisions. The cost of families asking for extra review of decisions could be in the form of hiring representatives to argue their case. For some families this cost would effectively be paid from legal aid. In these instances the legal costs per hour might be around £75 and would be met by the taxpayer. Non-legally aided families would bear their own costs. In these cases the legal costs per hour might be around £375. It has not been possible to determine what proportion of cases and legal time would be covered by legal aid.
- 3.28 Compared to the base case we consider that these additional financial costs would be incurred in a relatively low proportion of cases. Our starting assumption is that these actions might be made in very few cases, say less than 5% for illustrative purposes, and that this applies to actions initiated by any party, not just families. In addition families may wish to join in actions initiated by other parties, and vice versa. This might apply to initial applications made in the Family Proceedings Court and County Court, and also to any subsequent appeals made in the High Court. This figure might be significantly higher in the first year or so whilst the new framework beds down.
- 3.29 The length of each application and appeal would depend upon how each case is managed. For example if these additional actions were absorbed within the existing substantive hearing then on average they might last for around 0.5 hours rather than for several hours. If separate hearings were required then more time would probably be required, and our starting assumption might be 1-2 hours. A separate hearing in the High Court might last slightly longer.

- Local authority costs

- 3.30 It is possible that some of the applications and appeals mentioned above might be brought forward by local authorities acting on behalf of the child. In which case the costs would be borne by the local authority rather than by the family or by the legal aid budget.

- CAFCASS costs

- 3.31 The MoJ would be required to work closely with CAFCASS and CAFCASS Cymru to produce child friendly language leaflets to explain that the changes may mean that the media may be present at some proceedings and would be allowed to report certain information. In addition, as with local authorities, it is possible that some of the applications and appeals mentioned above might be brought forward by CAFCASS and CAFCASS Cymru on behalf of the child.

- Legal Aid costs

- 3.32 As explained above, a proportion of the total financial costs to families would be met by the Legal Aid budget, but it is not possible to identify how much.

- Media Costs

- 3.33 Compared to the base case the extra complexity of the secondary legislation and the reporting restrictions framework may generate additional uncertainty and confusion.
- 3.34 As for families, local authorities, CAFCASS and CAFCASS Cymru some of the proceedings mentioned above to challenge the discretionary decision of the judge may be brought by the media. Our starting assumption is that actions (from all sources, not just families) might be made in very few cases, say less than 5% for illustrative purposes. This figure might be significantly higher in the first year or so whilst the new framework beds down. The media may also wish to join in proceedings initiated by other parties. There would be legal representation costs but no legal aid costs for the media. We consider that these legal costs for the media may be at least £375 per hour.
- 3.35 As for families these costs might apply to initial applications made in the Family Proceedings Court and County Court, and also to any subsequent appeals made in the High Court. This figure might be significantly higher in the first year or so whilst the new framework beds down.
- 3.36 As for families the length of each application and appeal would depend upon how each case is managed. For example if these additional actions were absorbed within the existing substantive hearing then on average they might last for around 0.5 hours rather than for several hours. If separate hearings were required then more time would probably be required, and our starting assumption might be 1-2 hours. A separate hearing in the High Court might last slightly longer.

- Judicial System Costs

- 3.37 Increased training and familiarisation costs would be incurred, relating to judges and court staff. These might take the form of higher initial one-off costs followed by relatively lower ongoing costs. We consider that the one-off costs might be around £200,000 and the subsequent ongoing costs would be negligible.
- 3.38 Courts may incur administrative costs as a result of making information available for example in response to media requests. The net costs to the judicial system are likely to be small, especially if cost recovery is applied.
- 3.39 It is possible that the increased complexity of the secondary legislation provisions will be associated with an increased ongoing cost for every court case associated with the extra time required to understand and apply the provisions in every case. This may include adding delays to proceedings. This possible type of impact has been identified but there is no evidence relating to its potential size, if indeed it is non-negligible.
- 3.40 In addition there would be judicial system costs associated with the expected increased volume of applications and appeals. These costs largely fall between the costs of judicial time and administrative costs of running the proceedings. Judges would be required on a case by case basis to decide whether reporting restrictions should be increased or relaxed. Extra judicial time may be needed to hear oral representations from parties and the media as to whether current restrictions need to be relaxed or increased. This represents an opportunity cost on the value of their working time. Similarly, there would be additional resource costs on the court system in terms of administering the process. Whilst fees are charged in relation to court time currently they do not cover court costs completely. Ministry of Justice data suggests that for all types of court affected (Family Proceedings Court, County Court and High Court) judicial costs are around £165 per hour and court administrative costs are around £145 per hour.
- 3.41 Increased transparency might have an impact on court room behaviour and dynamics, with cost implications for court length and legal fees amongst others. For example there might be increased thoroughness in legal preparation and lengthier discussion of important issues, leading to higher costs. On the other hand there might be improvements in court room efficiency leading to lower costs.

- Public Awareness Costs

- 3.42 There would be an initial one-off public awareness cost involved with informing the public of change in the form of leaflets. This may be around £200,000, similar to the promulgation of other secondary legislation.

- Legal Profession Costs

- 3.43 We consider that any additional costs to the legal profession, for example resulting from training and familiarisation, would be reflected in the fees they charge their clients.

Benefits of Option 1

- Benefits to Wider Society

- 3.44 Press attendance would allow closer public scrutiny of the operation of the family courts and improve public knowledge about how decisions are reached by judges in family cases. This could also help remove any public perception of 'secret courts'.
- 3.45 Opening the courts to the press is largely seen as a benefit to the public at large, as freedom and access to justice is good for society in general allowing better informed decisions to be made.

-Benefits to Families

- 3.46 Press attendance and reporting of some information may allow families who would like to tell their story, and would like the public to witness their court experience; and know what happened to them; and allow the falsely accused to have a public witness. This would in turn mean that families will have more confidence in the way the court has reached its decision.

- Benefits to the Media

- 3.47 The main benefit to the media from the new policy is that they are able to report more substantially on court proceedings to the public. These proceedings may constitute stories that are of public interest, leading to a greater number of newspapers sold and revenue generated.
- 3.48 The proposed provisions also allow for media representatives who did not attend family proceedings to be able to get reports from accredited members of the media who attended and use the information in their subsequent reports. This type of 'syndicate' reporting is currently industry practice in other areas of the justice system. It ensures that the substance which is allowed to be reported under the new framework of restrictions is widely accessible, allowing for revenue to be generated for those representatives who were not able to attend the hearing. 'Syndicate' reporting therefore helps the flow of information, and may also help in the information potentially reaching a greater section of the public.

Option 2 – “Primary Legislation”

General Description

- 3.49 Introduce new primary legislation that would enable a single, consistent reporting regime for proceedings for all 3 tiers of court and all types of publication. The Government is clear in its direction towards achieving greater openness in the family courts, but that our progress towards this goal must be tempered by the imperative to keep children's best interests at the heart of the agenda. To meet this aim the provisions in the Bill have been drafted to include safeguards which can be reduced or, in some cases removed, once the operation of these measures has been reviewed and Ministers feel it is right to do so.

- 3.50 The underlying intention is that the regime should permit the media to report the essential substance of a case but prohibit publication of any matter likely to lead to identification of a child or adult as someone concerned, or having been concerned in the proceedings in question. This will regularise the position across different tiers of courts and types of proceedings by repealing some existing legislation and replacing it with one single statutory framework and doing this would best meet the Hampton Principles. Harmonisation may also reduce some types of awareness and admin costs for some users, such as the media, judiciary and legal profession.
- 3.51 The policy aims are to simplify the legislation so that it is accessible and easily understood; to have a single framework applicable to all levels of court; to cover gaps or lift some restrictions in the current statutory framework.
- 3.52 The proposed legislation will:
- Place a *ban* on publication of any details likely to lead to the *identification* of children, parties or witnesses (save expert witnesses) as concerned, or having been concerned, in the proceedings (with discretion in the court to relax the prohibition);
 - Provide *indefinite anonymity* to the families and parties involved, with court discretion to relax, application to relax restrictions can be made by parties.
 - Place *automatic prohibition* on publication of certain sensitive information with discretion in the court to relax prohibition; these could include medical records.
 - Enable expert witnesses to be named in reports, but with court discretion to prohibit publication if it is in the interest of the child or for the safety of the witnesses.
 - The Bill will include a provision for the courts to impose additional reporting restrictions where it is considered that there is a risk that the publication of the information would prejudice the welfare of the child or vulnerable adult.

It is intended that in all proceedings within scope, media representatives will be able to publish any information subject to the restriction on reporting identity, and subject to a “banned list” of categories of information the reporting of which is prohibited unless and to the extent that the court directs it should be permitted. The main areas of restriction will be:

- **Identification** - The starting point is no identification of children and families involved in proceedings – and this protection will last indefinitely unless a court lifts the condition. As with the current law, this is not restricted solely to names, addresses and so forth, but would include information which, if pieced together, would be likely to lead to identification. The proposal is stronger than the current protection available to children in children cases in the family courts – where automatic anonymity ends when the proceedings have concluded. It will be at the court’s discretion to lift this, in circumstances defined on the face of the Bill and where deemed appropriate. The relevant circumstances include the public interest; the need to do so in the interests of a child’s welfare; where necessary to avoid injustice; and, if appropriate in the

circumstances, upon request by a party, including a child. The restriction is automatic.

- “Banned list” - Categories of information that can only be reported with the specific authority of the court after the court has balanced the ECHR rights of those involved; these categories will be readily identifiable categories and cover information that is of a highly personal or sensitive nature. This will be included on the face of the Bill. Examples for inclusion on the banned list are medical records, psychiatric reports, the views of the child. The intention is that the schedule will be amendable via affirmative resolution.
- Anonymity of expert witnesses - The Bill will provide that expert witnesses who are paid a fee to provide evidence or opinion are not granted anonymity unless the naming of the expert may lead to the identification of the child or may jeopardise the safety of the expert witness. The proposal will not include those professionals required to give evidence through coming into contact with children as part of their routine profession (for example teachers & medical staff). The Bill will contain a provision for this to be amended through affirmative resolution at a later date, following a review.
- Welfare of the child - The Bill will include a provision for the courts to prohibit publication of information where it is considered that there is a risk to the welfare of the child or vulnerable adult, the safety of any person or if it is in the interests of justice in the proceedings in question.

3.53 There will be a power in the Bill conferred on the Secretary of State for Justice to remove the protection afforded by the banned list so that it is only identification information which may not be published without the court's permission, and all other information relating to the proceedings may be published unless the court specifically prohibits publication. This power is subject to a “sunrise” provision – it will not be exercisable until 18 months after commencement (to allow for the proper operation and evaluation of the scheme).

3.54 The provisions enable the naming of fee-paid professionals but not other professionals which give evidence as part of their normal professional role, but can be amended to allow the naming of further professionals.

This IA does not consider the likely impacts of these provisions. This is because this IA will be revised as part of the review that will take place after 18 months. The review will also provide us with the opportunity to ascertain any evidential information that this IA may be lacking in.

Costs of Option 2

3.55 Although the main types of possible anticipated costs have been identified below it is important to recognise that the assessment of their individual significance reflects a number of assumptions and is subject to much uncertainty. In practice some elements might turn out to be less costly than anticipated, and vice versa.

- Costs to Families

3.56 As with Option 1 families involved in court proceedings may place a considerable negative value on the proposed changes associated with their loss of privacy from the media being able to report the details of 'private' family proceedings. These would take the form of intangible costs. Compared to Option 1 families would be better off as a result of the automatic indefinite anonymity provided in Option 2. On the other hand we consider that Option 2 may provide for a wider degree of reporting into the details of each case, which would be valued negatively by families. On balance we adopt the cautious assumption that families might at the margin be worse off compared to Option 1.

3.57 As with Option 1 there is the possibility that additional transparency may make families more reluctant to use the court process as a result of the policy change. Given the above assumption this effect might at the margin be stronger than with Option 1.

3.58 As with Option 1 the financial costs relate to legal representation costs to families in bringing forward proceedings to challenge judges' discretionary decisions. We consider that these financial costs to families might be comparable to those which apply in Option 1.

- Local authority costs

3.59 As with Option 1 it is possible that some of the applications and appeals mentioned above might be brought forward by local authorities acting on behalf of the child. In which case the costs would be borne by the local authority rather than by the family or by the legal aid budget.

- CAFCASS costs

3.60 As with Option 1 the MoJ would be required to work closely with CAFCASS and CAFCASS Cymru to produce child friendly language leaflets to explain that the changes may mean that the media may be present at some proceedings and would be allowed to report certain information. In addition, as with local authorities, it is possible that some of the applications and appeals mentioned above might be brought forward by CAFCASS and CAFCASS Cymru on behalf of the child.

- Legal Aid costs

3.61 As explained above, a proportion of the total financial costs to families would be met by the Legal Aid budget, but it is not possible to identify how much.

- Media Costs

3.62 As for families, local authorities, CAFCASS and CAFCASS Cymru some of the proceedings mentioned above to challenge the discretionary decision of the judge may be brought by the media. We consider that these financial costs to the media might be comparable to those which apply under Option 1.

- Judicial System Costs

3.63 As with Option 1 increased training and familiarisation costs would be incurred, relating to judges and court staff. These might take the form of higher initial one-off costs followed by relatively lower ongoing costs. We anticipate that the size of these costs would be the same as for Option 1.

3.64 Courts may incur administrative costs as a result of making information available for example in response to media requests. These might be higher if there was a wider range and depth of reporting. As for Option 1 we consider that the net costs to the judicial system are likely to be small, especially if cost recovery is applied.

3.65 The additional judicial system costs associated with the expected increased volume of applications and appeals would probably be the same as with Option 1.

3.66 As for Option 1 increased transparency might have an impact on court room behaviour and dynamics, with cost implications for court length and legal fees amongst others. For example there might be increased thoroughness in legal preparation and lengthier discussion of important issues, leading to higher costs. On the other hand there might be improvements in court room efficiency leading to lower costs.

- Public Awareness Costs

3.67 As with Option 1 there would be an initial one-off public awareness cost involved with informing the public of change in the form of leaflets. This may be around £200,000, similar to the promulgation of other secondary legislation.

- Legal Profession Costs

3.68 We consider that any additional costs to the legal profession, for example resulting from training and familiarisation, would be reflected in the fees they charge their clients.

- Anonymity Breach Costs

3.69 Providing indefinite anonymity may lead to possible breaches with further costs on the justice system through judicial and administrative court time and possible legal aided defence costs.

3.70 In relation to Option 2 we consider that the provision of automatic anonymity rather than case by case anonymity might lead to anonymity being granted in more cases than with Option 1 or the base case. However we also consider that the much clearer primary legislation provisions under Option 2 would send clearer signals about anonymity and remove uncertainty about whether anonymity applies. The outcome is somewhat ambiguous.

- 3.71 Costs might take the form of investigation, prosecution and judicial system costs although any associated prison costs are assumed to be minimal with sentences taking the form of monetary penalties.
- **Costs to naming fee paid experts involved in family proceedings**
- 3.72 Naming fee paid expert witnesses in media reports may affect the number of them willing to come forward to provide evidence in family proceedings. There has been a shortage of experts who are willing and sufficiently experienced to provide expert evidence in child care proceedings and this has been ongoing since the early 1990s.⁷ This may have a knock on effect on the number of cases that may be delayed due to the lack of experts available to provide evidence or the quality of evidence in court cases may suffer due to lack of experts. However as courts will have discretion to provide for anonymity in cases where safety is an issue, or in cases where the identification of the expert may lead to the child being indentified, the identity of experts should be protected where there is a clear need to. In addition, it is also possible that greater transparency in this area may increase the average quality of experts available.
- 3.73 It should also be mentioned that there are currently no statutory provisions which provide experts with anonymity, and this position is shared between the base case and Option 1. Whilst experts can currently be named out of convention they often tend not to be, i.e. judges tend to grant them anonymity. It is possible that this position might change if, on the face of the new Act, there is an implicit expectation that experts will be named by default.
- 3.74 In conclusion given that the legal position relating to the naming of professionals and witnesses is not changing and given the uncertainty relating to the possible impacts we have not sought to quantify the possible change in costs – which are costs not just in terms of experts’ and professionals’ fees but also potential judicial system costs associated with e.g. delays or the conduct of hearings.

Benefits of Option 2

- Benefits to Society

- 3.75 There may be benefits to society from greater transparency coupled with effective protection (i.e. automatic anonymity) of those involved. We anticipate that these might be greater for Option 2 than for Option 1 because Option 2 allows for a greater flow of information.

⁷ Brophy, J (2006) Care proceedings under the Children Act 1989: A Research Review Research Series /06, London: DCA

- Benefits to Families

3.76 Press attendance and reporting of some information may allow families who would like to tell their story, and would like the public to witness their court experience; and know what happened to them; and allow the falsely accused to have a public witness. This would in turn mean that families will have more confidence in the way the court has reached its decision.

- Benefits to the Media

3.77 There would be benefits to the media from a clear, single, consistent reporting regime for proceedings covering all types of court and types of publication, which may result in a cost saving for the media. In so far as Option 2 leads to more media reporting relative to the base case, it may also generate additional revenues for media houses in the area of court news. These are assumed to be greater than under Option 1 as Option 2 allows for a greater flow of information, albeit with more anonymity.

Comparison of Options 1 and 2

- 3.78 Option 2 would provide for more transparency than Option 1 in relation to the details of each case, although Option 2 should provide for more anonymity than Option 1. We adopt the cautious assumption that overall families might, at the margin, be worse off in terms of their loss of privacy – but that this would be outweighed by the greater gains to society and to the media as a result of the increased transparency.
- 3.79 The costs of operating the more transparent system envisaged under Option 2 are expected to be fairly comparable to those under Option 1.

4. Specific Impact Tests

Small Firms Impact Test

4. 1 The family justice system currently interacts with three groups of small businesses: solicitors, barristers and newspaper organisations. The proposals will not affect the nature or quality of those interactions and so the impact on small business is minimal. The primary legislation is designed to allow the media to report more with strong protection for the rights to privacy of families and children, so it would not be appropriate to have different legislation applying to small firms – that would mean different outcomes for the media in terms of what they could report, and for families in terms of what is reported about them, depending on the size of the firm.
4. 2 The proposal to allow the media to report more widely the proceedings they attend may result in more work for solicitors and barristers representing parties. However the lawyers will be able to provide their clients with a leaflet that the Ministry of Justice will be producing for court users when the changes come into force. In addition the Ministry of Justice will work together with the Law Society for England and Wales to produce guidance for their members.
4. 3 Newspaper organisations can already attend Family Proceeding Courts with judicial discretion to exclude. This includes local newspapers. Therefore the proposals on reporting restrictions will not have an extra disproportionate burden to local newspapers.
4. 4 The proposal to give powers to the court to impose/relax case prohibitions may have an impact on small local newspapers who, if they are in attendance, may wish to challenge or appeal the reporting restrictions being imposed by the court but do not have the money to fund such an application. The bigger daily newspaper will have less of a problem paying for applications to relax reporting restrictions being imposed by the court. Although this may be an issue for some local newspapers who wish to contest their application but are unable to do so for financial reasons, there is an element of public interest which will need to be taken into consideration, as there is a need for the court to be able to have the powers to impose reporting restrictions to be able to protect the human rights of those concerned.

Human Rights Impact Assessment

4. 5 The European Court of Human Rights has held in *B v United Kingdom* [2001] 2 FLR 261 that the current practice of hearing children cases in private is Convention compliant. Whilst accepting that the general rule should be for civil proceedings to be heard in public, it is not inconsistent with A.6 for a State to designate a class of proceedings as an exception to that rule. This was apparent from the text of A.6 itself. Children proceedings were an example of justification of exclusion of the press and public to protect the privacy of children and parties, and avoid prejudicing the interests of justice. The Court noted that the restrictions regarding attendance must always be subject to a court's control and a court must always consider whether or not to exercise its discretion to relax the normal restrictions if requested by one of the parties.⁸
4. 6 The Court of Appeal has reaffirmed that the present system is Convention compliant in *Pelling v Bruce Williams* [2004] EWCA Civ 845. Dr Pelling, notwithstanding his lack of success in *B v UK*, had launched a challenge against s.97(2) Children Act 1989 and r.4.16(7) as not being ECHR compliant, specifically as contravening A.6 and A.10; and against two other provisions of the FPR restricting disclosure of documents in proceedings. The Court accepted the contention that his A.10(1) rights were engaged, but considered that the conduct of proceedings in chambers was necessary in a democratic society for protection of the rights of others – namely the other parties to proceedings and the child. The Court, however, reviewed its standard practice of automatically restricting the reporting of the identification of children in appeals which are heard in open court under the Children Act 1989. The Court of Appeal uses its inherent jurisdiction and section 39 of the Children and Young Persons Act 1933 to impose these restrictions. The Court of Appeal now considers on a case by case basis whether such restrictions should be imposed following hearings in open court and has regard to the competing rights involved enshrined in Article 8 and Article 10 of the Convention.
4. 7 However, most recently, the issue has been revisited by the European Court of Human Rights in *Moser v. Austria (Application no. 12643/02)* [2007] 1 FLR 702. The case concerned the removal of a child from a mother on the basis only that her residential status in Austria was unclear, and she had no accommodation. The child was taken into public care. The mother complained, amongst other things, that she had been denied an oral and public hearing. The Court found various violations of Article 8 (procedural elements) and Article 6 in her favour. Dicta at paragraph 97 are of particular relevance in this context:
4. 8 *“Moreover, the case of B&P v. United Kingdom concerned the parents’ dispute over a child’s residence, thus a dispute between family members, i.e. individual parties. The present case concerns the transfer of custody of the First applicant’s son to a public institution...thus opposing an individual to the*

⁸ See at paragraphs 39 to 40 of *B v United Kingdom* [2001] 2 FLR 261.

State. The Court considers that in this sphere, the reasons for excluding a case from public scrutiny must be subject to careful examination.”

4. 9 Munby J in *Re Webster: Norfolk County Council v. Webster* [2006] EWHC 2733, [2007] 1 FLR 1146 makes specific mention of *Moser* and raises the possibility that a higher standard is required to justify a hearing in public law children cases which is in private⁹.
4. 10 The *Webster* case (cited earlier in these instructions in relation to s.97(4) of the Children Act 1989) is also notable in that Munby J applied the balancing test in *Campbell, Re S*, and *Re W* (cited above at paragraphs 28, 30, 31) to the decision whether the requirement to hear the care proceedings in chambers set out in r.4.16(7) of the FPR 1991 should be disapplied and the matter heard in open court.¹⁰ He stated that this was a matter of Convention compliance, and Articles 6, 8 and 10 were engaged. Subsequently, *Webster* itself has been applied in *Re O* [2007] All ER (D) 169 to a decision under r.10.20A FPR (now revoked, but the precursor of Part XI, described above) regarding an application for disclosure of information from family proceedings where the BBC were being sued for libel. Finally, the President applied the same tests to the question of whether the media should be excluded from family proceedings under r.10.28 FPR 1991 in the case of *Re Child X* (citation at paragraph 167 above) – see paragraph 46 of that report.
4. 11 We take the view that what is proposed by way of primary legislation is compliant with the ECHR. It will clearly represent a change in the balance struck in legislation between Article 8 rights and those under Article 6 and more particularly Article 10. It is clear from Strasbourg jurisprudence that A.10 is a strong consideration, and in particular, under A.6, that great weight is placed upon public scrutiny of the operation of the courts. The policy focuses strongly on the need to restore public confidence in the operation of the family courts by allowing scrutiny of their operation through media reporting. Clearly the A.8 rights of litigants and children, and to a lesser extent witnesses, are engaged. We consider that the policy of allowing the reporting of the substance of the case but preventing identification, for life, of a child concerned in proceedings, will suitably reflect the Article 8 rights of the key persons involved. The protection given to identity is comprehensive when seen in the light of a prohibition, not only on actual identifying features such as name and addresses, but on information which would be likely to lead to identification, which could be any distinguishing fact of the case, including a fact which becomes “identifying” in combination with certain other facts – “jigsaw identification. Of particular importance is the system of additional prohibitions, the first category of which provides an automatic prohibition on publication of very sensitive matters such as medical opinion and treatment, subject to court discretion to relax it.
4. 12 The senior courts will retain inherent jurisdiction to impose additional restraints where A. 8 rights are not sufficiently protected by the new legislative scheme;

⁹ See paragraph 73.

¹⁰ See paragraphs 76 to 77

and all courts will be able to relax the “identification” prohibition further where A.6 or A.10 rights prevail.

Rural Proofing

4. 13 The Commission for Rural Communities impact guidance lists three areas to consider when developing policy, the first is to consider whether the policy is likely to have a different impact in rural areas, because of particular circumstances or needs. Our policy on revising the current reporting restrictions may have a different impact in rural areas. This may be say for example when the media attends a particular court and reports details of a particular case from which a child may be identified. This was the case in Z County Council and TS and DS and ES and A. Mr Justice Hedley in his judgment stated that “ because the child lives in a rural community where because of the comparatively unusual nature of the disability, he is more likely to be identifiable than if he live in a massive conurbation”.
4. 14 The Bill will have an absolute ban on any information that would lead to the identification of the children and families involved; this would involve a ban on publishing geographical information likely to identify a child or family involved in family proceedings.

Carbon Assessment

4. 15 Defra’s environmental impact guidance lists six areas which are key sources of green house gases: energy; industrial processes; solvents and other product use; agriculture, land-use change and forestry; and waste.
4. 16 Other environmental issues are vulnerability to the predicted effects of climate change; impacts on waste management; impact on air quality; material change to land or townscape; water pollution; the disturbing or habitat or wildlife and the number of people exposed to noise or the levels of exposure. Our proposals on revising the reporting restrictions framework have no impact on these areas.

Health Impact Assessment

4. 17 The Department of Health has developed a checklist to help assess whether there might be adverse impacts on health as a result of new legislation. The three questions are:
 - *Will your policy have a significant impact on human health by virtue of its effects on the wider determinants of health?* The wider determinants listed cover income, crime, environment, transport, housing, education, employment, agriculture and social cohesion. There is nothing to suggest that the proposals to improve the openness of family courts would have an impact on any of these areas that might lead to a significant impact on human health.

- *Will there be a significant impact on any of the lifestyle-related variables?* The variables listed are: physical activity; diet; smoking, drugs or alcohol use; sexual behaviour; and accidents and stress at home or work. For some being involved in some types of family cases is a very stressful time. However the key objective of improving the openness of family courts is to improve public confidence in the family justice system and so it is not considered that there would be a significant detrimental impact on any of these variables.
- *Is there likely to be a significant demand on any of the following health and social care services?* The services listed are: primary care; community services; hospital care; need for medicines; accident or emergency attendances; social services and health protection and preparedness response. Our proposals focus on improving the openness of family courts and therefore will not have a significant impact on demand for these services.

5. Other Issues

Enforcement and Implementation

5. 1 Some of the proposals will be implemented by means of regulations made by the Secretary of State. Once these regulations have been made, following consultation with the usual representative bodies. We envisage that the earliest these changes could be fully implemented will be autumn 2010.

Post Implementation Review

5. 2 The Ministry of Justice intends to monitor the operation of the law following implementation. To allow the measures to take effect we are planning a review 18 months after the Bill comes into force. This review will also assess whether there have been any unintended consequences by that date and what should be done about them, and also whether phase 2 of the changes should commence.

Compensatory Simplification measures

5. 3 The proposed legislation will provide simple and consistent arrangements for the reporting of family cases, repealing some old legislation in the process and introducing new consistent legislative framework governing the reporting of family courts.

Implementation and Delivery Plan

5. 4 The transparency clauses of the Bill will become enacted on the day specified by the Lord Chancellor by order made by statutory instrument.

Communicating change

5. 5 The Ministry of Justice will work with organisations representing stakeholders who interact with the family justice system in order to agree how best the changes should be communicated to them. The Ministry of Justice will continue to provide information to family court users, updating its range of leaflets to reflect the new arrangements.

Consultations

- A.1 The Ministry of Justice has consulted on two sets of proposals to improve transparency of family courts. The first consultation in 2006 proposed that the media be allowed into family proceedings in all tiers of court to counter claims about lack of accountability for decisions and secrecy of family courts. The second consultation in 2007 proposed instead the increase of information in the family courts by piloting the provision of written anonymised judgments in some cases to those involved in proceedings, and the wider public.
- A.2 The July 2006 and June 2007 consultation papers were sent to over 800 organisations and individuals known to have an interest; these included the media and children groups amongst others. The consultation papers were also made available to the general public via the Departments website. Organisations consulted included (non-exhaustive list)
- Association of Lawyers for Children
 - Resolution
 - Law Society
 - Bar Council
 - NYAS
 - 11 Million
 - National Children Bureau
 - Society of Editors
 - Newspaper Society
- A.3 The proposals to improve the openness of family courts have been the subject of extensive consultation both within Government and with wider stakeholders. Throughout the first consultation period a number of stakeholder events were held with different groups.¹¹

¹¹ Notes of the issues raised during some of the consultation events can be found from pages 38-78 of Confidence and confidentiality, Improving transparency and privacy in family courts, response to consultation, CM7036.

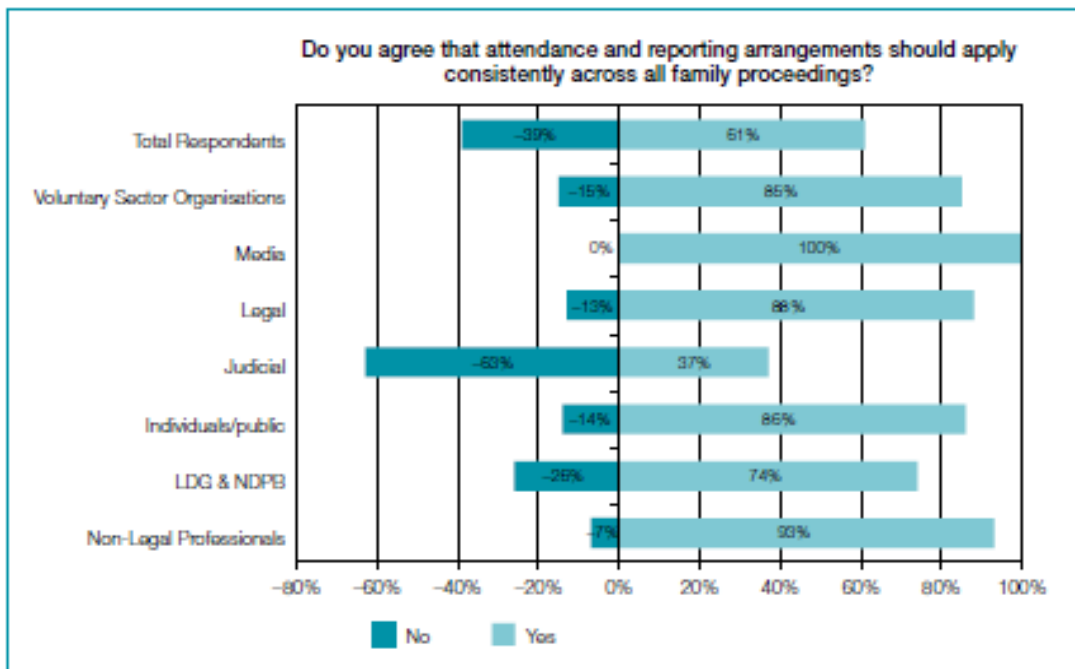
Within government

A.4 There has been wide discussion across Government departments during the development of this policy. Discussions have been held with the following:

- Home Office
- Department for Children, Schools and Families
- Department of Health
- Crown Prosecution Service
- Welsh Assembly
- Attorney General's Office

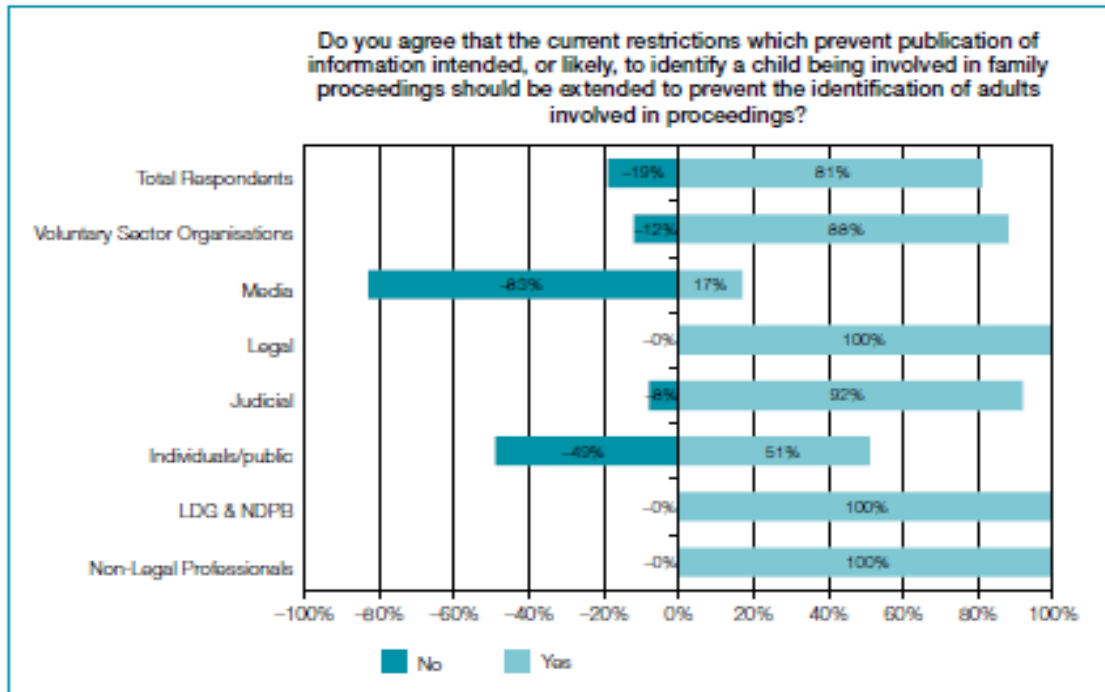
Stakeholder meetings

A.5 Although there has been no formal consultation on the immediate proposals a large number of stakeholder meetings have taken place to help inform policy development. The issue of reporting restrictions was consulted on generally in the 2006 consultation. In that consultation exercise we asked whether people were asked whether they agreed that attendance and reporting arrangements should apply consistently across all family proceedings. 61 per cent of the respondents agreed that attendance and reporting arrangements should apply consistently across all family proceedings.



A.6 People were asked whether they agreed that the current restrictions which prevent publication of information to identify a child involved in proceedings should be extended to prevent the identification of adults involved in

proceedings. 81% agreed that the current restrictions which prevent publication of information should be extended to adults involved in proceedings.



A.7 Stakeholders met included all levels of the judiciary, members of the legal profession, members of the healthcare profession and voluntary organisations including women’s groups, men’s groups and those working with children. Key external stakeholder groups we met included:

- Association of District Judges
- HM Council of Circuit Judges
- Association of Lawyers for Children
- Family Law Bar Association
- Families Need Fathers
- Society of Editors
- Newspaper Society
- Cafcass Young peoples Panel - A group of young people jointly sponsored by the Family Justice Council and CAF/CASS, have met to discuss these issues

Summary of Current Reporting Restrictions

Table [x]				
Reporting Restrictions - provision	Content	Penalty	Court to which restrictions apply	Proceedings to which restrictions apply
1. section 97(2) of the Children Act 1989	No person shall publish to the public at large or a section of the public any material which is intended, or likely, to identify –	Section 97(6) – offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale (£1,000).	Fpc, cc and the HC	Applies to proceedings in which any power under the CA 89 may be exercised.
	(a) any child as being involved in any proceedings before a court in which any power under the CA may be exercised;			
	(b) an address or school as being that of a child involved in any such proceedings.			

2. section 12 of the Administration of Justice Act 1960	The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say-	Criminal contempt is punishable by- 1. Imprisonment (up to 2 years in superior court);	Cc's and the HC – if within (i) to (iii).	Exact scope is unclear because it applies to proceedings which otherwise relate wholly or mainly to the maintenance or upbringing of a minor – this will depend on facts of a particular case.
	Where the proceedings	2. a fine – there is no statutory limit to the amount of a fine which a superior court can impose.		
	(i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;	3. an injunction to restrain repetition of the act of contempt;	If matter heard in private then fpc – starting point for fpc is restricted access – section 12 will not apply – but the magistrates can in certain circumstances opt to hear the matter in private – section 12 might apply if	

			within (ii) or (iii).	
	(ii) are brought under the Children Act 1989; or	4. cost order (in addition to other punishment);		
	(iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor.	5. a hospital order or guardianship order, or an interim hospital order if the person committing the contempt is suffering from a mental illness or severe mental impairment – superior court has the same power as a crown court would have in the case of a person convicted of an offence.		
3. Section 1(1)(a) and (b) of the Judicial Proceedings (Regulation of Reports) Act 1926	It shall not be lawful to print or publish, or cause or procure to be printed or published-	Offence – liable on summary conviction to imprisonment for a term not exceeding four months, or to a fine not exceeding level 5 on the standard scale (£2,000), or to both such imprisonment and fine – (Attorney	(b) The HC and cc's.	Divorce, nullity and judicial separation. Dissolution, nullity and separation orders under the Civil Partnership Act 2004.

		General must sanction prosecution).		
	(a) in relation to any judicial proceedings any indecent matter or indecent medical, surgical or physiological details being matter or details the publication of which would be calculated to injure public morals;			
	(b) in relation to any judicial proceedings for dissolution of marriage, for nullity of marriage, or for judicial separation, or for the dissolution or annulment of a civil partnership or for the separation of civil partners, any particulars other than the following, that is to say:-			
	(i) the names, addresses and occupations of the			

	parties and witnesses;			
	(ii) a concise statement of the charges, defences and countercharges in support of which evidence has been given;			
	(iii) submissions on any point of law arising in the course of the proceedings, and the decision of the court thereon;			
	(iv) the summing-up of the judge and the finding of the jury (if any) and the judgment of the court and observations made by the judge in giving judgment.			
4. Section 39(1) of the Children and Young Persons Act 1933	In relation to any proceedings in any court...the court may direct that-	Any person who publishes any matter in contravention of any such direction shall on summary conviction be liable in respect of each offence to a fine	In any court.	In any proceedings in which a child is concerned.

		not exceeding level 5 on the standard scale (£2,000).		
	(a) no newspaper report of the proceedings shall reveal the name, address, or school, or include any particulars calculated to lead to the identification, of any child or young person concerned in the proceedings, either as being the person [by or against] or in respect of whom the proceedings are taken, or as being a witness therein;			
	no picture shall be published in any newspaper as being or including a picture of any child or young person so concerned in the proceedings;			
	except in so far (if at all) as may be			

	permitted by the direction of the court.			
5. Section 2 of the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968	The following provisions of this section shall have effect with a view to preventing or restricting publicity for-	See box 3.	Fpc, cc and the HC – applications regarding declaration of parentage may be made to fpc (as well as cc and the HC); other proceedings listed cc and HC.	Proceedings listed in provision.
	(i) proceedings under section 22 of that Act (which relates to proceedings by a wife against her husband for maintenance), including any proceedings begun before the said commencement and carried out under that section and any proceedings for the discharge or variation of an order made or			

<p>deemed to have been made under that section or for the temporary suspension of any provision of any such order of the revival of the operation of any provision so suspended;</p>			
<p>(ii) proceedings under section 27 of the Matrimonial Causes Act 1973 (which relates to proceedings by a wife against her husband, or by a husband against his wife, for financial provision) and any proceedings for the discharge or variation of any order made under that section or for the temporary suspension of any provision of any such order or the revival of the operation of any provision so</p>			

	suspended;			
	(iii) proceedings under Part III of the FLA 1986 (declarations regarding status);			
	(iv) proceedings under Part 9 of Schedule 5 to the Civil Partnership Act 2004;			
	(v) proceedings under section 58 of the 2004 Act.			
	Section 1(1)(b) of the Judicial Proceedings (Regulation of Reports) Act 1926 applied to proceedings listed above.			
6. Section 71 of the Magistrates' Courts Act 1980	In the case of family proceedings in a magistrates' court it shall not be lawful for a person-	Offence –liable on summary conviction to a fine not exceeding level 4 on the standard scale (£1,000). Consent of Attorney General required for prosecution.	fpc	Family proceedings as defined in section 65 of the Magistrates' Courts Act 1980.
	(a) to print or publish, or cause or procure to be			

printed or published, in a newspaper or periodical, or			
(b) to include, or cause or procure to be included, in a programme in programme service			
any particulars of the proceedings other than such particulars as are mentioned in subsection (1A) below.			
(1A) The particulars are-			
(a) the names, addresses and occupations of the parties and witnesses;			
(b) the grounds of the application, and a concise statement of the charges, defences and counter-charges in support of which evidence has been given;			
(c) submissions on any point of law arising in the			

	course of the proceedings and the decision of the court, and any observations made by the court in giving it. [subject to section 97(2) CA 89; also more restrictive for adoption]			
7. Section 50 of the Child Support Act 1991	This makes it an offence for any person who is, or has been, employed in employment to which the section applies (subsection 5) to disclose information acquired during course of employment relating to a particular person with lawful authority.	Offence – on indictment liable to imprisonment for a term not exceeding two years or a fine or both; or	N/A	N/A
		On summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory		

		maximum or both.		
8. Article 8	<u>Where no statutory provisions apply it is possible to apply for a reporting restriction based on Article 8 alone.[1]</u>	Contempt of court – 2 years imprisonment, no limit on fine.	The High Court.	All proceedings
9. Section 41 of the Criminal Justice Act 1925	No person shall-	Fine – level 3 on the standard scale (£400).	All courts.	Civil or criminal proceedings
	(a) take or attempt to take in any court any photograph, or with a view to publication make or attempt to make in any court any portrait or sketch, of any person, being a judge of the court or a juror or a witness in or a party to any proceedings before the court, whether civil or criminal; or			
	(b) publish any photograph, portrait or sketch taken or made in contravention of the foregoing provisions of this section or any			

	reproduction thereof;			
	and if any person acts in contravention of this section he shall, on summary conviction, be liable in respect of each offence to a fine not exceeding level 3 on the standard scale.			
10. Section 9 of the Contempt of Court Act 1981	It is a contempt of court-	See box 2. [If enforceable in mags then 1 month limit for imprisonment and £2,500 limit for fine].	All courts.	All proceedings.
	(a) to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the permission of the court; or			
	(b) to publish a recording of legal proceedings made by means of any such instrument, or any recording			

	<p>derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication.</p>			
<p>11. Data Protection Act 1998 – Schedule 1 to the Act sets out the principles which must be applied to the processing of personal data.</p>	<p>This Act imposes requirements on “data controllers” – a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data ^[2]are, or are to, processed. This could be a newspaper editor for example. Schedule 1 to the Act sets out the principles which must be applied to the processing of personal data. For example, the first</p>	<p>Compensation.</p>	<p>Only a county court and the High Court have jurisdiction to hear applications under section 13.</p>	<p>Applies to a data controller in respect of any data only if (1) the data controller is established in the UK and the data is processed in the context of that establishment; or (2) the data controller is established neither in the UK nor in any other EEA state but uses equipment in the UK for processing the data otherwise than for the purposes of transit through the UK.</p>

	<p>principle requires that personal data shall be processed fairly and lawfully and only provided that certain conditions are met. In the case of all data one of the conditions set out in Schedule 2 must be met e.g. The data subject has given his consent to the processing of the personal data. In the case of sensitive personal data^[3] one of the conditions in Schedule 3 must also be met. Schedule 3 begins with the condition that “the data subject has given his explicit consent to the processing of the personal data”.</p>			
		<p>Section 13 entitles, in specified circumstances, an individual who suffers damage or distress by reason</p>		

		of contravention of the Act to recover compensation.		
		There is, however, an exemption in section 32 of the Act-		
		<u>(1) Personal data which are processed only for the special purposes are exempt from any provision to which this subsection relates if-(a) the processing is undertaken with a view to the publication by any person of any journalistic, literary or artistic material, (b) the data controller reasonably believes that, having regard in particular to the special importance of the public interest in freedom of expression, publication would be in the public interest, and (c) the data controller reasonably believes that, in all</u>		

		<u>the circumstances, compliance with that provision is incompatible with the special purposes[4].</u>		
10. Rule 10.20A of the Family Proceedings Rules 1991 and rule 23A of the Family Proceedings Courts (Children Act 1989) Rules 1991	Court may give permission to disclose information relating to proceedings in private –	This rule in itself is not a restriction – but if an order is not complied with then this may be a contempt.	Fpc, cc and the HC.	Same as section 12 of the Administration of Justice Act 1960.
	Under the Children Act 1989;			
	Under the inherent jurisdiction of the High Court relating to a minor;	See box 2.		
	Otherwise relate wholly or mainly to the maintenance or upbringing of a minor.			
11. Duty of confidentiality	Almost every aspect of private life may be covered by obligations of confidence, provided that the basic requirements for protection are present and no rules of law or public policy are infringed. The basic requirements for	There are a number of remedies available – including interim and final injunctions restraining disclosure of information, damages, and orders for delivery up and destruction of documents.	All courts.	Can apply to information disclosed in court proceedings – depends on the extent of the disclosure and the private nature of the information. Could apply to information disclosed in family proceedings if held

	<p>protection are that the information is of limited availability and is of a specific character (i.e. possible to point to a definite source).</p>			<p>in private.</p>
	<p>A duty of confidence arises whenever the party subject to the duty is in a situation where he either knew or ought to have known that the other person could reasonably expect his privacy to be protected. There is no requirement for a prior relationship to exist between the parties. The Court of Appeal have said that this tort would be better described as the misuse of private information rather than the breach of confidential information. Certain kinds of information about a person,</p>			

	such as information relating to health, personal relationships, or finances, may be easy to identify as private. Third parties who acquire by underhand, dishonest or improper means information which they know or ought to know is subject to protected confidence may also be sued (e.g. a newspaper).			
12. Common law - contempt [wider than section 1 of Contempt of Court Act 1981 -below and therefore still relevant]	Contempt for publications to interfere with the administration of justice.	Punishable by imprisonment for a term not exceeding two years; or a fine (no statutory limit for superior court - £2,500 for inferior court);	All courts.	All proceedings.
	Distinction with section 1 of Contempt of Court Act below:	Order to give security for good behaviour;		
	1. Applies to publications which intend to interfere with administration of justice; and	Injunction against repetition of the act of contempt.		

<p>2. may still amount to contempt at common law on the basis that publication may interfere with the administration of justice as a continuing process rather than in particular proceedings – e.g. trial by newspaper before outcome of case caught by the common law – not necessarily by section 1.</p>			
<p><u>3. publications which put pressure on parties to proceedings to persuade them to abandon the proceedings, settle upon certain terms or otherwise act in a particular way in relation to the proceedings – may be a contempt (AG v Hislop[5]).</u></p>			
<p>NB – The general principle in</p>			

	common law is that there is immunity from contempt for fair and accurate reports, published contemporaneously and in good faith, of proceedings heard in open court.			
13. Section 1 of the Contempt of Court Act 1981	Conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.	Punishable by imprisonment for a term not exceeding two years; or a fine (no statutory limit for superior court - £2,500 for inferior court);	All courts	Only applies to proceedings which are "active".
	Section 2(1) – limits section 1 to publications addressed to the public at large or any section of the public.	Superior court has the power to make a hospital order or guardianship order in the case of a person suffering from mental illness who could otherwise be committed prison for contempt.		
	Section 2(2) – publications can only constitute a contempt under the strict liability rule if they create a substantial risk that the course of justice in the proceedings in			

question will be seriously impeded or prejudiced.			
Section 2(3) – section 1 only applies to a publication if the proceedings in question are active.			
Section 6(c) – restricts section 1 to unintentional contempts (these are still covered by the common law);			
Section 5 qualifies section 1 – a publication made as or as part of a discussion in good faith of public affairs or other matters of general public interest is not to be treated as a contempt of court ... if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.			
<p><u>1[1] See President's Direction – Applications for Reporting Restriction Orders – [2005] Fam Law 398</u> <u>1[2] Personal data means data which relate to a living individual who can be identified –(a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual and</u></p>			

any indication of the intentions of the data controller or any other person in respect of the individual.
1[3] Sensitive personal data means personal data consisting of information as to (a) the racial or ethnic origin of the data subject, (b) his political opinions, (c) his religious beliefs or other beliefs of a similar nature, (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992), (e) his physical or mental health or condition, (f) his sexual life, (g) the commission or alleged commission by him of any offence, or (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings".
1[4] Special purposes defined in section 3 – purposes of journalism, artistic purposes, literary purposes.
1[5] [1991] 1 QB 514.

Summary of section 12 of the Administration of Justice Act 1960 provided by (Mr Justice Munby in the case of Re

Re B defined what reporting S12 did not prohibit as:

(1) Events in the lives of the children which are already in the public domain, or which do not relate to the proceedings, can be the subject of publication.

(2) Certain material, which might well qualify in a loose sense as information relating to the proceedings, can be published:

(a) the fact, if it be the case, that a child is a ward of court and is the subject of wardship proceedings or that a child is the subject of residence or other proceedings under the Children Act 1989 or of proceedings relating wholly or mainly to his maintenance or upbringing ...;

(b) the name, address or photograph of such a child as is mentioned in (a).. ; (but this needs to be read in connection with s.97(2) Children Act 1989 which prohibits the identity or any other information that is likely to identify a child as being involved in proceedings from being published).

(c) the name, address or photograph of the parties (or, if the child is a party, the other parties) to such proceedings as are mentioned in

(a) (again this needs to be read in light of section 97(2) Children Act 1989);

(d) the date, time or place of a past or future hearing of such proceedings ... ;

(e) the nature of the dispute in such proceedings ... ;

(f) anything which has been seen or heard by a person conducting himself lawfully in the public corridor or other public precincts outside the court in which the hearing in private is taking place ... ; and

(g) the text or summary of the whole or part of any order made in such proceedings ... "

(3) The identification of witnesses: including the bare fact that an identified witness has given evidence for, or against, a particular party

to the proceedings.

(4) So far as the nature of the dispute is concerned, it would, for example, be permissible to report identifying the issues in a case as being whether the mother suffered from Munchausen's Syndrome by Proxy and whether she had killed (or attempted to kill) her child(ren) by, for instance, smothering or poisoning, and to identify the various medical experts who have given evidence in relation to those issues, and to state which of the parties each expert has given evidence for or against.

Re B also defined what S12 **did prohibit** as:

- a) what went on in front of the judge (substance)

- b) documents, transcripts or notes of the evidence,
- c) transcripts or notes of the judgement

Current legal restrictions on reporting

- D1. The decision of the Court of Appeal in 2006 in the case of *Clayton v Clayton* means that the identity of the child subject to proceedings is protected during the currency of the proceedings by *Section 97 (2) of the Children Act 1989*, but not after proceedings has ended. Since s39 (1) of the *Children and Young Persons Act 1933* is worded very similarly to s97 (2), it is likely that a challenge to that legislation could also be decided in a similar way. If s39 were to be successfully challenged, there could be a gap in reporting restrictions on identity between one set of proceedings ending and an appeal being lodged.
- D2. It is potentially a contempt of court to communicate information about the substance of a case concerning a child which is heard in private under the *Administration of Justice Act 1960* (Section 12). A person found in contempt of court may be liable to a term of imprisonment of up to two years, as stated in the *Contempt of Court Act 1981* (Section 14), and there is no statutory limit upon the fine that may be imposed by the Divisional Court.
- D3. In relation to family proceedings not involving children in a magistrates' court, it is possible to report the names, addresses and occupations of the parties and witnesses, the grounds of the applications, submissions on any point of law and the decision of the court.
- D4. **Table 1** shows a general overview of current arrangements (as of 27 April 2009) in the different tiers of family courts:

Table 1 : Current Reporting Restrictions	
Court	Current arrangements – Open/Closed
<i>Family Proceedings Court</i>	Adoption cases always in private without press attendance.
	Press may attend other proceedings subject to reporting restrictions.
	Other people directly concerned in the case may attend.
	Court may permit any other person to be present.
<i>County Court</i>	Adoption cases may be attended in the discretion of the court (s.101 Adoption and Children Act 2002).
	Press have the right to attend other proceedings subject to reporting restrictions and judicial discretion to exclude.
	Court may permit any other person to be present.
	Adoption cases may be attended in the discretion of the court (s.101 Adoption and Children Act 2002).
<i>High Court</i>	Press have right to attend other proceedings subject to reporting restrictions and judicial discretion to exclude.
	Court may permit any other person to be present.
	Open to Press and public unless lower court had power to sit in private and Court of Appeal chooses to do so.
<i>Court of Appeal</i>	Judgements anonymised on a case by case basis.
	Reporting restrictions at judicial discretion.
	Open to the public and press.
	Judgements anonymised on a case by case basis.
	Reporting restrictions at judicial discretion.

D5. The legal restrictions with the largest impacts come under Section 12, which applies to private proceedings. Mr Justice Munby provides a useful summary of these restrictions (which was given in the case of *Re B*).¹²

¹² This summary can be found in Annex C.