

Draft Children (Contact) and Adoption Bill

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Draft Children (Contact) and Adoption Bill

Presented to Parliament by:
The Secretary of State for Education and Skills
by Command of Her Majesty

February 2005

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Ministerial Foreword



The separation of parents can be a stressful and traumatic experience for both parents and children, as well as for their wider families. But for three million of the twelve million children in this country, the separation of their parents has been a fact of life.

The Government recognises that parental separation is a part of the changing and ever more complex shape of families in our society. We recognise also that, after a separation, parents are the people who know best what will work for their family and how to bring up their children.

There is a role for Government, though, in helping to ease people's passage through what is undoubtedly one of the most difficult times of their lives, and support them in finding what is best for their family.

In the Green Paper *Parental Separation: Children's Needs and Parents' Responsibilities*, which was published in July 2004, and in our response to the consultation on that paper, published in January this year, we set out a broad programme of reform to support parents and children. Our proposals include better information and advice, such as new parenting plans including clear examples of good contact arrangements, access to better advice through helplines, and stronger encouragement towards mediation.

Within the context of this wider reform, we have a range of proposals to help the 10 per cent of parents who do turn to the courts for help. This includes wider use of in-court conciliation, improvement of case management by the courts, and the launch of the Family Resolutions Pilot Project for parents who need additional support to help them reach agreement.

The proposals related to contact in this draft Bill are for this group of parents. Courts need powers to support parents and children in this difficult situation and facilitate contact through directing people to attend relevant classes or programmes that could help build positive contact arrangements.

It is also essential that, if a court has made a contact order with the best interests of the child as its paramount consideration, that contact should actually take place. If it doesn't, the courts need realistic and usable powers to take action. The current position, where they have access only to fines or imprisonment, which will often be to the detriment of children, is untenable, and parents and children deserve better.

The draft Bill also makes provision to safeguard children from abroad where they are being adopted by UK residents. Children are entitled to grow up as part of a loving family which can meet their needs during childhood and beyond. Although there are children in the UK who are looking for adoptive parents, there are also children in other countries for whom intercountry adoption may be their only opportunity to belong to a permanent family. The Government has a duty to ensure that the welfare of children is upheld where intercountry adoption takes place.

We believe that this draft Bill represents an important step for children and families, both those experiencing parental separation and children being adopted from other countries. In publishing the draft Bill for pre-legislative scrutiny, and for public consideration and comment, we look forward to opening a debate on these particular aspects of the larger issues facing both Government and society around how we ensure the very best of outcomes for our children.

A handwritten signature in black ink, appearing to read 'Ruth Kelly', written in a cursive style.

Ruth Kelly

Introduction

- 1.** This document includes the draft Children (Contact) and Adoption Bill, as well as accompanying explanatory notes and a Regulatory Impact Assessment. By publishing the Bill in draft for pre-legislative scrutiny, we are offering an opportunity for public comment and feedback on the proposals it contains, as well as scrutiny by a Parliamentary committee. We welcome all comments on the draft Bill, which may be sent to us using the contact details at the back of this document.
- 2.** The draft Bill will offer the courts new and more flexible powers, including:
 - Power to direct parties in a contact case to attend information meetings, meetings with a counsellor, parenting programmes/classes or other activities designed to deal with contact disputes; and
 - Power to attach conditions to contact orders which may require attendance at a given class or programme.
- 3.** Where a contact order has been breached, courts will be able to:
 - impose community-based “enforcement orders” for unpaid work or curfew; or
 - award financial compensation from one party to another (for example where the cost of a holiday has been lost).
- 4.** Consultation responses were mainly supportive of the proposed new legislation. The senior judiciary and others have long recommended reform in this area.
- 5.** The draft Bill also includes provisions relating to the suspension of intercountry adoption. There are concerns about adoption systems in some countries where there are insufficient safeguards in place to protect child welfare. The draft Bill provides a statutory framework for the suspension of intercountry adoptions from specified countries where there are public policy concerns about the process of intercountry adoption in that country, such as concerns about child trafficking.

- 6.** The publication of the Bill in draft is intended to offer a chance for debate on the issues it raises prior to its formal introduction to Parliament. Depending on debate during the pre-legislative scrutiny process, we will consider what changes might be needed to the Bill before it is introduced. For example, provisions on the electronic monitoring of curfew requirements are included primarily for illustrative purposes (and therefore appear in square brackets), as a starting point for debate on the most appropriate mechanisms for the monitoring of compliance with the new enforcement orders in the draft Bill where they are used by the courts.
- 7.** The Government is committed to the New Burdens Doctrine to reimburse local authorities fully for any extra costs they face because of additional requirements placed on them. We will work with local government as appropriate to assess the resource implications before they are implemented. At this stage Government believes there are no additional costs on local government arising from the draft Bill, which will not involve local government in its implementation.

Children (Contact) and Adoption Bill

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TO

Make provision as regards contact with children; to make provision in relation to adoptions with a foreign element; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

CONTACT WITH CHILDREN

1 Contact activities

After section 11 of the Children Act 1989 (c. 41) insert—

“11A Contact activity direction

- | | |
|---|----|
| <p>(1) This section applies where in any family proceedings—</p> <p style="padding-left: 20px;">(a) the court is considering whether to make an order falling within subsection (2), and</p> <p style="padding-left: 20px;">(b) the making of the order is opposed.</p> | 5 |
| <p>(2) These are the orders falling within this subsection—</p> <p style="padding-left: 20px;">(a) a contact order;</p> <p style="padding-left: 20px;">(b) an order varying a contact order;</p> <p style="padding-left: 20px;">(c) an order discharging a contact order.</p> | 10 |
| <p>(3) This section does not apply if—</p> <p style="padding-left: 20px;">(a) the child concerned is being looked after by a local authority, or</p> <p style="padding-left: 20px;">(b) the child concerned is the subject of an application for an adoption order (within the meaning of section 46(1) of the Adoption and Children Act 2002).</p> | 15 |
| <p>(4) The court may make a direction (a “contact activity direction”) requiring a person who is a party to the proceedings to take part in a contact activity.</p> | 20 |

- (5) The direction is to specify the contact activity and the person providing the activity.
- (6) The court may not make a contact activity direction requiring a person who is a child to take part in a contact activity unless the person is a parent of the child with respect to whom the order is being considered.
- (7) A court may not on the same occasion –
- (a) make a contact activity direction, and
 - (b) dispose finally of the proceedings as they relate to contact with the child concerned.
- (8) In considering whether to make a contact activity direction, the welfare of the child concerned is to be the court’s paramount consideration. 1

11B Contact activity condition

- (1) This section applies if in any family proceedings the court makes an order falling within subsection (2).
- (2) These are the orders falling within this subsection – 1
- (a) a contact order with respect to a child in favour of a person;
 - (b) an order varying a contact order so as to provide for, or alter provision for, a person and a child to have contact;
 - (c) a contact order with respect to a child, made without finally disposing of the proceedings as they relate to contact with a child, and not being a contact order in favour of a person; 2
 - (d) an order varying a contact order so as to provide for a person and a child to have no contact, being an order made without finally disposing of the proceedings as they relate to contact with the child. 2
- (3) This section does not apply if –
- (a) the child concerned is being looked after by a local authority, or
 - (b) the proceedings are proceedings in which an application for a contact order is, or is to be, heard together with an application for an adoption order (within the meaning of section 46(1) of the Adoption and Children Act 2002). 3
- (4) The order may impose a condition (a “contact activity condition”) requiring a person who is a party to the proceedings to take part in a contact activity.
- (5) The condition is to specify the contact activity and the person providing the activity. 3
- (6) If the order imposing a contact activity condition is an order falling within subsection (2)(b) or (d) that varies a contact order, the condition has effect as a condition of the contact order so varied.
- (7) The order may not impose a contact activity condition on a person who is a child unless the person is a parent of the child with respect to whom the order is being made. 4

11C Sections 11A and 11B: further provision

- (1) This section applies where in any family proceedings the court is considering making – 4

-
- (a) a contact activity direction, or
(b) an order falling within section 11B(2) that imposes a contact activity condition.
- (2) Before making such a direction (or imposing such a condition), a court must satisfy itself as to the matters falling within subsections (3) to (5). 5
- (3) The first matter is that the contact activity proposed to be specified is appropriate in the circumstances of the case.
- (4) The second matter is the suitability of the person proposed to be specified as the provider of the contact activity.
- (5) The third matter is that the contact activity proposed to be specified is provided – 10
- (a) in the area in which the person who would be subject to the order resides, or
(b) in a place to which he can reasonably be expected to travel.
- (6) Before making such a direction (or imposing such a condition), the court must obtain and consider information about the person who would be subject to the direction (or the condition) and the likely effect of the direction (or the condition) on him. 15
- (7) Information about the likely effect of the direction (or the condition) may, in particular, include information as to – 20
- (a) any conflict with the person’s religious beliefs;
(b) any interference with the times (if any) at which he normally works or attends an educational establishment.
- (8) The court may ask an officer of the Service or a Welsh family proceedings officer to provide the court with information as to the matters in subsections (3) to (6); and it shall be the duty of the officer of the Service or Welsh family proceedings officer to comply with any such request. 25
- (9) The appropriate national authority may by regulations make provision as regards – 30
- (a) the circumstances in which the appropriate national authority may assist a person to pay the costs of a specified contact activity;
(b) the form and amount of any assistance.
- (10) In this section “specified” means specified in a contact activity direction (or in a contact activity condition). 35
- 11D Monitoring contact activities**
- (1) This section applies if in any family proceedings the court makes –
- (a) a contact activity direction, or
(b) an order falling within section 11B(2) that imposes a contact activity condition. 40
- (2) The court may ask an officer of the Service or a Welsh family proceedings officer –

- (a) to monitor, or arrange for the monitoring of, a person's compliance with the direction (or the condition) in question, and
 - (b) to report to the court on such matters relating to the person's compliance as the court may require. 5
- (3) It shall be the duty of the officer of the Service or Welsh family proceedings officer to comply with any request under subsection (2).

11E Contact activities

- (1) A person takes part in a contact activity if—
 - (a) he attends an information session, or 10
 - (b) he takes part in a programme, class, counselling or guidance session or other activity falling within subsection (3).
- (2) An information session is a session organized in order to provide information or advice as regards arrangements for, or other matters relating to, contact with children. 15
- (3) A programme, class, counselling or guidance session or other activity falls within this subsection if—
 - (a) it is devised for the purpose of assisting a person to establish, maintain or improve contact with a child, or
 - (b) it may be used for such a purpose.” 20

2 Facilitating and monitoring contact

After section 11E of the Children Act 1989 (c. 41) (as inserted by section 1) insert—

“11F Facilitating and monitoring contact

- (1) This section applies if in any family proceedings the court makes an order falling within subsection (2). 25
- (2) These are the orders falling within this subsection—
 - (a) a contact order with respect to a child in favour of a person, or
 - (b) an order varying a contact order so as to provide for, or alter provision for, a person and a child to have contact. 30
- (3) This section does not apply if when the order is made—
 - (a) the child is being looked after by a local authority, or
 - (b) the court also makes an adoption order (within the meaning of section 46(1) of the Adoption and Children Act 2002).
- (4) The court may ask an officer of the Service or a Welsh family proceedings officer to carry out any of the functions falling within subsection (5). 35
- (5) These are the functions falling within this subsection—
 - (a) facilitating compliance with the contact order (or the contact order as varied); 40
 - (b) monitoring whether the parties to the proceedings comply with the contact order (or the contact order as varied);
 - (c) reporting to the court on such matters relating to the parties' compliance as the court may specify in the order.

- (6) If the contact order (or the contact order as varied) includes a contact activity condition, a request under subsection (4) is to be treated as relating to the provisions of the order other than the contact activity condition.
- (7) It shall be the duty of the officer of the Service or Welsh family proceedings officer to comply with any request under subsection (4). 5
- (8) In making a request under subsection (4), the court is to specify the period for which the officer of the Service or Welsh family proceedings officer is to carry out the function in question; and the period specified may not exceed twelve months. 10
- (9) The court may order any party to the proceedings to take such steps as may be specified in the order with a view to enabling the officer of the Service or Welsh family proceedings officer to comply with the court’s request under subsection (4).
- (10) But the court may not make an order under subsection (9) with respect to a party who is a child unless he is a parent of the child with respect to whom the order falling within subsection (2) was made.” 15

3 Enforcement orders

- (1) After section 11F of the Children Act 1989 (c. 41) (as inserted by section 2) insert— 20
- “11G Enforcement orders**
- (1) This section applies if in any family proceedings the court has made a contact order with respect to a child.
- (2) This section does not apply if the contact order was made— 25
- (a) when the child was being looked after by a local authority, or
- (b) on the same occasion as an adoption order (within the meaning of section 46(1) of the Adoption and Children Act 2002).
- (3) If the court is satisfied that a party to the proceedings has without reasonable excuse failed to comply with the contact order, it may make an order (an “enforcement order”) imposing on the person— 30
- (a) an unpaid work requirement, or
- (b) a curfew requirement.
- (4) [If the court makes an enforcement order imposing a curfew requirement on a party to the proceedings, it may include in the order provision imposing a compliance monitoring requirement on him.] 35
- (5) If the court is satisfied that the person has on more than one occasion failed without reasonable excuse to comply with the contact order, it may make an enforcement order in respect of each occasion.
- (6) The court may suspend an enforcement order for such period as it thinks fit. 40
- (7) The court may make an enforcement order of its own motion or on an application made by a party to the proceedings.

- (8) A court may not make an enforcement order against a person in respect of any failure to comply occurring before the person attained the age of 18.
- (9) In making an enforcement order, a court must take into account the welfare of the child concerned. 5
- (10) In Schedule A1—
- (a) Part 1 makes further provision in relation to enforcement orders;
 - (b) Part 2 makes provision as regards the revocation and amendment of an enforcement order; 10
 - (c) Part 3 makes provision as regards the breach of an enforcement order.
- (11) In this section references to an unpaid work requirement, a curfew requirement or [a compliance monitoring requirement] are to be construed in accordance with section 199, 204 or [215] of the Criminal Justice Act 2003, subject to the modifications set out in Part 1 of Schedule A1. 15
- (12) This section is without prejudice to section 63(3) of the Magistrates' Courts Act 1980 as it applies in relation to contact orders.
- 11H Enforcement orders: further provision** 20
- (1) Before making an enforcement order as regards a person in breach of a contact order, the court must be satisfied that—
- (a) making the enforcement order proposed is necessary to secure the person's compliance with the contact order;
 - (b) the likely effect on the person of the enforcement order proposed to be made is proportionate to the seriousness of the breach of the contact order. 25
- (2) Before making an enforcement order as regards a person in breach of a contact order, the court must obtain and consider information about the person and the likely effect of the enforcement order on him. 30
- (3) Information about the likely effect of the enforcement order may, in particular, include information as to—
- (a) any conflict with the person's religious beliefs;
 - (b) any interference with the times (if any) at which he normally works or attends an educational establishment. 35
- (4) Before making an enforcement order imposing an unpaid work requirement, the court must satisfy itself that provision for the person to work under such a requirement can be made—
- (a) in the area in which the person in breach resides, or
 - (b) in a place to which he can reasonably be expected to travel. 40
- (5) Before making an enforcement order imposing a curfew requirement, the court must obtain and consider information about the place proposed to be specified in the order (including information about the attitude of the persons likely to be affected by the enforced presence there of the person subject to the requirement). 45

- (6) A court that proposes to make an enforcement order may ask an officer of the Service or a Welsh family proceedings officer to provide the court with information as to the matters in subsections (2) to (5).
- (7) Where the court makes an enforcement order in relation to a person, it may ask an officer of the Service or a Welsh family proceedings officer to monitor, or arrange for the monitoring of – 5
- (a) the person’s compliance with any requirement imposed by the order, and
- (b) where an unpaid work requirement is imposed, the person’s suitability to perform work in compliance with the requirement, 10
- and to report to the court on such matters relating to the order (including the matters falling within paragraph (a) or (b)) as the court may require.
- (8) It shall be the duty of the officer of the Service or Welsh family proceedings officer to comply with any request under this section.” 15
- (2) Schedule 1 (which contains a Schedule to be inserted before Schedule 1 to the Children Act 1989 (c. 41)) has effect.

4 Compensation for financial loss

After section 11H of the Children Act 1989 (as inserted by section 3) insert— 20

“11I Compensation for financial loss

- (1) This section applies if in any family proceedings a court has made a contact order with respect to a child in favour of a person.
- (2) This section does not apply if the contact order was made— 25
- (a) when the child was being looked after by a local authority, or
- (b) on the same occasion as an adoption order (within the meaning of section 46(1) of the Adoption and Children Act 2002).
- (3) Any party to the proceedings may apply to the court for an order under subsection (4) on the ground that— 30
- (a) another party to the proceedings has without reasonable excuse failed to comply with the contact order, and
- (b) the applicant has suffered financial loss by reason of the breach.
- (4) If the court is satisfied that the ground is established, it may order the person in breach to pay the applicant compensation in respect of his financial loss. 35
- (5) A court may not make an order under this section requiring a person to pay compensation in respect of any failure by him to comply occurring before the person attained the age of 18.
- (6) The amount of compensation is to be determined by the court, but may not exceed the amount of the applicant’s financial loss. 40
- (7) In determining the amount of compensation payable by the person in breach, the court must take into account the person’s financial circumstances.

- (8) An amount ordered to be paid as compensation may be recovered by the applicant as a civil debt due to him.
- (9) In exercising its powers under this section, a court is to take into account the welfare of the child concerned.”

5 Transitional provision

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- (1) In relation to a child free for adoption by virtue of an order under section 18 of the Adoption Act 1976 (c. 36) (“the 1976 Act”) made before the repeal of that section by the Adoption and Children Act 2002 (c. 38) (“the 2002 Act”) or following an application to which paragraph 6 of Schedule 4 to the 2002 Act applies—
- (a) sections 11B(3)(a) and 11F(3)(a) of the Children Act 1989 (c. 41) have effect as if after “authority”, where it occurs in both provisions, there were inserted “or is free for adoption by virtue of an order under section 18 of the Adoption Act 1976”, and
- (b) sections 11G(2)(a) and 11I(2)(a) of the Children Act 1989 have effect as if after “authority”, where it occurs in both provisions, there were inserted “or was free for adoption by virtue of an order under section 18 of the Adoption Act 1976”.
- (2) In relation to a child adopted by virtue of an adoption order under section 12(1) of the 1976 Act made before the repeal of that section by the 2002 Act or following an application to which paragraph 8 of Schedule 4 to the 2002 Act applies, references in sections 11A, 11B, 11F, 11G and 11I of the Children Act 1989 to section 46(1) of the 2002 Act are to be treated as including a reference to section 12(1) of the 1976 Act.
- (3) Sections 11G and 11I of the Children Act 1989 do not apply in relation to any failure to comply with a contact order under section 8 of that Act where the failure in question occurs before the commencement of sections 3 and 4 of this Act.

PART 2

ADOPTIONS WITH A FOREIGN ELEMENT

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6 Declaration of special restrictions on adoptions from abroad

- (1) This section applies if the Secretary of State has reason to believe that, because of practices taking place in a country or territory outside the British Islands (the “other country”) in connection with the adoption of children, it would be contrary to public policy to further the bringing of children into the United Kingdom in the cases mentioned in subsection (2).
- (2) The cases are that a British resident—
- (a) wishes to bring, or cause another to bring, a child who is not a British resident into the United Kingdom for the purpose of adoption by the British resident, and, in connection with the proposed adoption, there have been proceedings in the other country or dealings with authorities or agencies there, or
- (b) wishes to bring, or cause another to bring, into the United Kingdom a child adopted by the British resident under an adoption effected,

within the period of six months ending with the date of the bringing in, under the law of the other country.

- (3) It is immaterial whether the other country is a Convention country or not.
- (4) The Secretary of State may after consulting the National Assembly for Wales declare, in relation to any such country or territory, that special restrictions are to apply for the time being in relation to the bringing in of children in the cases mentioned in subsection (2) (and a country or territory in relation to which such a declaration has effect for the time being is referred to in this section and sections 7 and 8 as a “restricted country”). 5
- (5) The Secretary of State must publish reasons for making the declaration in relation to each restricted country. 10
- (6) The Secretary of State must publish a list of restricted countries (“the restricted list”) and keep the list up to date.
- (7) The restricted list and the reasons are to be published in whatever way the Secretary of State thinks appropriate for bringing them to the attention of adoption agencies and members of the public. 15
- (8) The Secretary of State must keep under review, in relation to each restricted country, whether it should continue to be a restricted country.
- (9) If the Secretary of State determines, in relation to a restricted country, that there is no longer reason to believe what is mentioned in subsection (1), he must cancel the declaration made in relation to it under subsection (4). 20
- (10) In this section—
 - (a) “British resident” means a person habitually resident in the British Islands, and the reference to adoption by a British resident includes adoption by a British resident and another person, 25
 - (b) “Convention country” has the same meaning as in the Adoption and Children Act 2002 (c. 38).

7 The special restrictions

- (1) The special restrictions mentioned in section 6(4) are to be set out in regulations made by the Secretary of State after consulting the National Assembly for Wales. 30
- (2) The regulations must make provision requiring the Secretary of State not to take any step which he might otherwise have taken in connection with furthering the bringing of a child into the United Kingdom in the cases mentioned in section 6(2) (whether or not that step is provided for by or by virtue of any enactment). 35
- (3) But the regulations must also make provision for cases where in relation to the bringing in of any particular child the prospective adopters satisfy the Secretary of State that despite the special restrictions he should take the steps he might have taken in their absence. 40

8 Imposition of extra conditions in certain cases

- (1) Regulations under section 7 may provide—
 - (a) for the Secretary of State to specify in the restricted list, in relation to any restricted country, a step which is not otherwise provided for by or

- by virtue of any enactment but which, by virtue of the arrangements between the United Kingdom and that country, he normally takes in connection with the bringing in of a child where that country is concerned, and
- (b) that, if such a step has been so specified in relation to a restricted country, one or more conditions specified in the regulations are to be met in respect of a child brought into the United Kingdom in either of the cases mentioned in section 6(2) (reading the reference there to the “other country” as being to the restricted country in question). 5
- (2) Those conditions are in addition to any which would otherwise have to be met by virtue of section 83 of the Adoption and Children Act 2002 (c. 38) (restriction on bringing children in) or under or by virtue of any other enactment. 10
- (3) A person who brings, or causes another to bring, a child into the United Kingdom is guilty of an offence if any condition required to be met by virtue of subsection (1)(b) is not met. 15
- (4) Subsection (3) does not apply if the step specified in the restricted list in relation to any country had already been taken before the publication of the restricted list.
- (5) A person guilty of an offence under subsection (3) is liable— 20
- (a) on summary conviction to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months, or a fine, or both.
- (6) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44) (general limit on magistrates’ court’s power to impose imprisonment), the reference in subsection (5)(a) to 12 months is to be read as a reference to 6 months. 25

PART 3

MISCELLANEOUS AND FINAL

Miscellaneous provisions 30

9 Minor and consequential amendments

Schedule 2 (minor and consequential amendments) has effect.

Final provisions

10 Regulations

- (1) Any power to make regulations conferred by this Act on the Secretary of State is exercisable by statutory instrument, and such a statutory instrument is to be subject to annulment in pursuance of a resolution of either House of Parliament. 35
- (2) Regulations made under this Act may make different provision for different purposes. 40

-
- (3) A power to make regulations under this Act (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to—
- (a) those cases subject to specified exceptions, or
 - (b) a particular case or class of case.

11 Short title, commencement and extent

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- (1) This Act may be cited as the Children (Contact) and Adoption Act 2005.
- (2) This Act (except this section) shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes.
- (3) Before making an order under subsection (2) the Secretary of State must consult the National Assembly for Wales. 10
- (4) The amendment of an enactment has the same extent as the enactment to which it relates.
- (5) Subject to subsection (4), this Act extends to England and Wales only.

SCHEDULES

SCHEDULE 1

Section 3

ENFORCEMENT ORDERS

Before Schedule 1 to the Children Act 1989 (c. 41) insert—

“SCHEDULE A1

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ENFORCEMENT ORDERS

PART 1

MODIFICATIONS OF CHAPTER 4 OF PART 12 OF THE CRIMINAL JUSTICE ACT 2003

Introductory

- 1 If a court makes or proposes to make an enforcement order imposing an unpaid work requirement, a curfew requirement or [a compliance monitoring requirement], the provisions of Chapter 4 of Part 12 of the Criminal Justice Act 2003 that relate to a relevant order (as defined by section 196 of that Act) imposing— 10
- (a) an unpaid work requirement (as defined by section 199 of that Act), 15
 - (b) a curfew requirement (as defined by section 204 of that Act), and
 - (c) [a compliance monitoring requirement (as defined by section 215 of that Act),]
- are to have effect in relation to the enforcement order as they have effect in relation to a relevant order, subject to the modifications of that Chapter set out in paragraphs 2 and 3. 20

General

- 2 A reference in Chapter 4 of Part 12 of the Criminal Justice Act 2003 to an offender is, in relation to an enforcement order, to be treated as a reference to the person subject to the order; and such a reference in section 215A(1)(b) or 218(4) of that Act is, in addition, to be treated as including a reference to a person in relation to whom an enforcement order is proposed to be made. 25

Specific modifications

- 3 (1) In section 197 (meaning of “responsible officer”)— 30
- (a) in subsection (1)(c) for “the qualifying officer” substitute “the officer of a local probation board”,
 - (b) omit subsection (2).

- (2) The power of the Secretary of State by order under section 197(3) to amend the definition of “responsible officer” and to make consequential amendments includes power –
- (a) to amend sub-paragraph (1) of this paragraph, and
 - (b) to make any other amendments of this paragraph (including further modifications of Chapter 4 of Part 12 of the Criminal Justice Act 2003) that appear to the Secretary of State to be necessary or expedient in consequence of any amendment made by virtue of paragraph (a). 5
- (3) In section 198 (duties of responsible officer) –
- (a) in subsection (1), omit paragraph (c), and 10
 - (b) after subsection (1) insert –
 - “(1A) Where –
 - (a) an enforcement order has effect, and
 - (b) an officer of the Child and Family Court Advisory and Support Service or a Welsh family proceedings officer (as defined in section 35 of the Children Act 2004) has, in relation to the enforcement order, a duty to report to the court in accordance with section 11H(7) of the Children Act 1989, 15 - it is the duty of the responsible officer to report to the officer of the Child and Family Court Advisory and Support Service or Welsh family proceedings officer on such matters as he may require for the purposes of his duty to report to the court.” 20
- (4) In section 199 (unpaid work requirement) – 25
- (a) in subsection (2) (minimum and maximum hours of unpaid work) for paragraphs (a) and (b) substitute –
 - “(a) not less than 40, and
 - (b) not more than 200.”,
 - (b) omit subsections (3) and (4), and 30
 - (c) in subsection (5) for the words from the beginning to “each of them” substitute “Where the court makes enforcement orders in respect of two or more breaches of the contact order in question and includes unpaid work requirements in each of them”.
- (5) In section 200 (obligations of person subject to unpaid work requirement) – 35
- (a) for subsection (2) substitute –
 - “(2) Subject to paragraph 6 of Schedule A1 to the Children Act 1989 (power to extend order), the work required to be performed under an unpaid work requirement imposed by an enforcement order must be performed during a period of twelve months. 40
 - (2A) But the period of twelve months is not to run while the enforcement order is suspended under section 11G(6) of the Children Act 1989.”,
 - (b) in subsection (3) for “a community order” substitute “an enforcement order”, and 45
 - (c) omit subsection (4).
- (6) In section 204 (curfew requirement) –

- (a) for subsection (3) substitute –
- “(3) An enforcement order imposing a curfew requirement may not specify periods which fall outside the period of six months beginning with the day on which the order is made.
- (3A) But the period of six months is not to run while the enforcement order is suspended under section 11G(6) of the Children Act 1989. 5
- (3B) The days that may be specified in an enforcement order imposing a curfew requirement as days on which a person is subject to the curfew requirement for any part of the day may not exceed 12.”, and 10
- (b) omit subsections (4) to (6).
- (7) Section 216 (petty sessions area to be specified in relevant order) is omitted.
- (8) Section 217 (requirement to avoid conflict with religious beliefs) is omitted.
- (9) In section 218 (availability of arrangements in local area), subsection (1) (condition for imposition of unpaid work requirement) is omitted. 15
- (10) Section 219 (provision of copies of relevant order) is omitted.
- (11) Section 220 (duty to keep in touch with responsible officer) applies in relation to an enforcement order as it applies in relation to a community order. 20
- (12) The power of the Secretary of State by order under section 223 to amend the provisions mentioned in section 223(1) or (3) includes, in relation to a provision so amended, power to amend this paragraph so as to modify such a provision as it has effect in relation to enforcement orders.

PART 2 25

REVOCATION AND AMENDMENT

Power to revoke

- 4 (1) This paragraph applies where a court has made an enforcement order in respect of a person’s failure to comply with a contact order and the enforcement order is in force. 30
- (2) If it appears to the court that, having regard to circumstances which have arisen since the enforcement order was made, it would be appropriate for the enforcement order to be revoked, the court may revoke the order.
- (3) The court may revoke the order of its own motion or on an application by the person in breach. 35
- (4) In exercising its powers under this paragraph, the court is to have regard to –
- (a) the extent to which the person subject to the enforcement order has complied with it;
- (b) whether it is necessary for the enforcement order to continue in force in order to secure the person’s compliance with the contact order. 40

Power to amend

- 5 (1) This paragraph applies where a court has made an enforcement order in respect of a person’s failure to comply with a contact order and the enforcement order is in force.
- (2) If it appears to the court that in the circumstances it would be appropriate for the enforcement order to be amended, it may amend the order by replacing the requirement (or requirements) with – 5
- (a) a requirement of the same kind (or requirements of the same kind);
- (b) such other provision as to requirements as may be included in an enforcement order. 10
- (3) The court may amend the order of its own motion or on an application by the person in breach.
- (4) In exercising its powers under this paragraph, the court is to have regard to – 15
- (a) the extent to which the person in breach has complied with the enforcement order;
- (b) whether the effect on him of the enforcement order as proposed to be amended is proportionate to the seriousness of his failure to comply with the contact order.

Extension of unpaid work requirement

20

- 6 (1) This paragraph applies where a court has made an enforcement order in respect of a person’s failure to comply with a contact order and the enforcement order is in force.
- (2) If it appears to the court that, having regard to circumstances that have arisen since the enforcement order was made, it would be appropriate to do so, the court may, in relation to the order, extend the period of twelve months specified in section 200(2) of the Criminal Justice Act 2003 (as substituted by paragraph 3). 25
- (3) The court may extend the period of its own motion or on an application by the person in breach. 30

PART 3

BREACH

- 7 (1) This paragraph applies where a court has made an enforcement order (“the first order”) in respect of a person’s failure to comply with a contact order.
- (2) If at any time while the first order is in force it appears to the court that the person has failed to comply with any of the requirements imposed in the order, the court may give notice to the person to appear before the court at the time specified in the notice. 35
- (3) If the court is satisfied that the person has without reasonable excuse failed to comply with any requirement imposed by the first order, the court may – 40
- (a) amend the first order so as to make it more onerous, or

- (b) make an enforcement order in relation to the person, for the breach of the contact order in respect of which the first order was made, as if the first order had not been made.
- (4) In dealing with a person under sub-paragraph (3)(a), the court may extend the duration of a requirement, subject to any limit imposed by Chapter 4 of Part 12 of the Criminal Justice Act 2003, as modified by Part 1 of this Schedule. 5
- (5) In exercising its powers under sub-paragraph (3), the court must take into account the extent to which the person subject to the first order has complied with its requirements. 10
- (6) The fact that the person subject to the first order has, since the making of that order, complied with the contact order in question does not prevent the court from exercising its powers under sub-paragraph (3).
- (7) Sub-paragraph (3) is without prejudice to section 63(3) of the Magistrates' Courts Act 1980 as it applies in relation to enforcement orders." 15

SCHEDULE 2

Section 9

MINOR AND CONSEQUENTIAL AMENDMENTS

Children Act 1989 (c. 41)

- 1 The Children Act 1989 (c. 41) is amended as follows.
- 2 In section 91 (effect and duration of orders etc) after subsection (2) insert— 20
- “(2A) Where a contact activity direction has been made as regards contact with a child, the making of a care order with respect to the child discharges the direction.”
- 3 In section 104 (regulations and orders)—
- (a) in subsection (1) for “or the Secretary of State” substitute “, the Secretary of State or the National Assembly for Wales”; 25
- (b) after subsection (2) insert—
- “(2A) Subsection (2) does not apply to a statutory instrument made solely by the National Assembly for Wales.”.
- 4 In section 105 (interpretation), in subsection (1) at the appropriate place insert— 30
- ““appropriate national authority” means—
- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the National Assembly for Wales;”;
- ““contact activity” is to be construed in accordance with section 11E;”;
- ““contact activity condition” has the meaning given by section 11B;”;
- ““contact activity direction” has the meaning given by section 11A;”;
- ““enforcement order” has the meaning given by section 11G;”.
- 35 40

Adoption and Children Act 2002 (c. 38)

- 5 (1) Section 26 of the Adoption and Children Act 2002 (c. 38) (effect on contact of placing a child for adoption) is amended as follows.
- (2) In subsection (1), after “have effect” insert “and any contact activity direction relating to contact with the child is discharged”. 5
- (3) In subsection (6), after “In this section,” insert ““contact activity direction” has the meaning given by section 11A of the 1989 Act and”.

Explanatory Notes

INTRODUCTION

1. These explanatory notes relate to the Children (Contact) and Adoption Bill as published for pre-legislative scrutiny on 2 February 2005. They have been prepared by the Department for Education and Skills in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. This Bill is intended to assist in the implementation of the Green Paper *Parental Separation: Children's Needs and Parents' Responsibilities* (Cm 6273), published in July 2004 and available on the website www.dfes.gov.uk/childrensneeds. The Government's position as stated in the Green Paper is that the welfare of the child should be paramount in determining any question related to the child's upbringing, as set out in section 1(1) of the Children Act 1989 ("the 1989 Act"). The Government believes that a child should continue to have a meaningful relationship with both parents after a parental separation, so long as it is safe and in the child's best interests.
4. The Bill provides the courts with new powers to facilitate contact and underpin contact orders made under section 8 of the 1989 Act.
5. The Bill also provides a statutory framework for the suspension of intercountry adoptions from individual countries where there are concerns about adoption there.

Territorial Coverage

6. The Bill extends to England and Wales only. The Annex contains a summary of the effects on the powers of the National Assembly for Wales.

SUMMARY

Part 1 – Contact Orders

7. At present, if the terms of a contact order under section 8 of the 1989 Act are breached, courts have only limited options. They may ignore the breach, or they may hold the person breaching the order in contempt of court (or, in the case of the Magistrates’ Court, may use the powers in section 63 of the Magistrates’ Courts Act 1980), resulting in a fine or imprisonment, neither of which is often likely to be in the best interests of the child. If appropriate, the court may alter the residence or contact arrangements as regards the child. The provisions in this Bill offer the courts a wider range of powers, including:
- power to direct parties in a contact case to attend information meetings, meetings with a counsellor, or parenting programmes/classes and other activities designed to deal with contact disputes;
 - power to attach conditions to contact orders which may require attendance at such a meeting, class, or programme.
- And where a contact order has been breached:
- power to impose “enforcement orders” for unpaid work or curfew;
 - power to award financial compensation from one parent to another (for example where the cost of a holiday has been lost).

Part 2 – Adoption

8. Part 2 makes provision for the Secretary of State to suspend intercountry adoptions from a country if she has concerns about the intercountry adoption process there.

COMMENTARY ON CLAUSES AND SCHEDULES

Part 1 – Contact Orders

Clause 1 Contact activities

9. *Clause 1* inserts a series of new sections after section 11 of the 1989 Act. Inserted section 11A of the 1989 Act makes provision for courts to make orders for ‘contact activity directions’ where a court is considering whether to make a contact order, or to make an order varying or discharging a contact order, and the making of the order or its variation or discharge is opposed by another party to the proceedings.
10. This allows the court to direct a party to the case, at any stage in proceedings prior to a final contact order being made, to undertake ‘contact activities’. They are defined in new section 11E of the 1989 Act, inserted by clause 1, as being attending an information meeting, or taking part in a programme, class, counselling or guidance session, or other activity, which is designed for, or

capable of being used for, the purpose of helping to establish, maintain or improve contact with a child.

- 11.** Section 11B of the 1989 Act, as inserted by clause 1, provides for a court to make ‘contact activity conditions’ when making a contact order under section 8 of the 1989 Act (other than where the contact order in question is a final order for “no contact”). This condition will require a person to take part in a contact activity, as described in section 11E of the 1989 Act.
- 12.** Section 11C of the 1989 Act, as inserted by clause 1, provides further detail around the imposition of contact activity directions or contact activity conditions. It makes clear that courts can only make orders imposing such directions or conditions if satisfied that:
 - the activity is appropriate in the circumstances of the case,
 - the provider of the activity concerned is suitable to provide it, and
 - the activity involved is available either locally or in an area it is reasonable to expect the person in question to travel to.
- 13.** A court is also required to consider the likely effect of the contact activity on the person who would be required to undertake it, taking into account in particular any conflict with the person’s religious beliefs and the times when he or she works or attends an educational establishment. The section provides for a court to ask an officer of the Children and Family Court Advisory and Support Service (“a CAFCASS officer”) to provide information on these matters.
- 14.** References in these Notes to CAFCASS officers should be read as referring equally to Welsh family proceedings officers in Wales.
- 15.** Section 11C of the 1989 Act also includes a power for regulations to be made by the Secretary of State, or the National Assembly for Wales, as appropriate, regarding any assistance that the Secretary of State, or the National Assembly for Wales, may provide in meeting the costs of contact activities. Such costs would otherwise be met by the person undertaking the activity.
- 16.** Section 11D of the 1989 Act provides for a CAFCASS officer to be asked to assist in the monitoring of compliance with contact activity directions or conditions and to report to the court on matters that the court indicates it wishes to be told about relating to that compliance. The CAFCASS officer has a duty to comply with that request.

Clause 2 Facilitating and monitoring contact

- 17.** In addition to the power to ask a CAFCASS officer to monitor compliance with contact activity directions and contact activity conditions under new section 11D, section 11F of the 1989 Act, inserted by clause 2, provides that a court may ask a CAFCASS officer to facilitate and monitor compliance with a contact order, allowing the officer the opportunity to support the people concerned and also to advise the court if there is a breach of the order. The court may ask the CAFCASS officer to carry out this role for a period up to a year. The officer has a duty to comply with such a request.

Clause 3 Enforcement orders

- 18.** *Clause 3* inserts provision in the 1989 Act for courts to make “enforcement orders” (new section 11G of the 1989 Act) if the terms of a contact order (including a contact activity condition) are breached. Such orders may be made in response to an application either by a party to the proceedings, or of the court’s own motion. The court must be satisfied that the order has been breached without reasonable excuse.
- 19.** An enforcement order may impose an unpaid work requirement or a curfew requirement on a person. In the case of a curfew requirement, the court may also impose an electronic monitoring requirement. When considering making an enforcement order, the court must take into account the welfare of the child concerned.
- 20.** Section 11H of the 1989 Act provides that in deciding whether to impose one of these sanctions, the court must be satisfied that the use of the sanction is necessary to secure compliance with the order in question and that the sanction is proportionate, given the seriousness of the breach.
- 21.** That section also requires the court, before making an enforcement order, to obtain and consider information about the person on whom the order would be imposed, and the likely effect of the order on him, in particular, any conflict with his religious beliefs or work times. The court must be satisfied that the enforcement measure is available locally. In the case of a curfew requirement, the court must consider information about the suitability of the place it is proposed the curfew should take place, and the attitude of any others living in that place to the making of the curfew order. The court may ask a CAFCASS officer to provide this information, and the officer has a duty to comply with such a request.
- 22.** Section 11H(7) of the 1989 Act provides that the court may ask a CAFCASS officer to monitor a person’s compliance with an enforcement order. Again, the officer has a duty to comply with such a request.

Schedule 1 Enforcement orders

- 23.** Schedule A1 to the 1989 Act, inserted by Schedule 1 to the Bill, makes further provision about enforcement orders.
- 24.** Paragraphs 2 and 3 of Schedule A1 to the 1989 Act modify Chapter 4 of Part 12 of the Criminal Justice Act 2003 (“the 2003 Act”) so as to make further provision about enforcement orders under section 11G of the 1989 Act . As well as a number of detailed technical changes to ensure the operation of those provisions, it specifies that the maximum number of hours of unpaid work that may be required is 200, rather than 300 as is the case in relation to unpaid work requirements imposed under the 2003 Act. It also sets out that curfew requirements may only be put in place over a period of up to six months, on no more than 12 days over the course of that six months (no change is made to the requirement in the 2003 Act that a curfew may not be imposed for more than 12 hours on a given day).
- 25.** Part 2 of Schedule A1 to the 1989 Act gives powers to the court to amend or revoke an enforcement order.

26. Part 2 of Schedule A1 to the 1989 Act also allows the court to extend the period over which an unpaid work requirement must be complied with.
27. Part 3 of Schedule A1 to the 1989 Act provides that, if the terms of an enforcement order are breached, the court may amend the original order to make it more onerous, or impose another enforcement order.

Clause 4 Compensation for financial loss

28. Provision for one party to compensate another for financial loss is made by section 11I of the 1989 Act, inserted by clause 4. This allows the court, on application by one of the parties, to require another party who has caused financial loss to that party through breaching a contact order, to pay compensation up to the amount of the loss. The court must take into account the welfare of any child concerned, and the financial circumstances of the person in breach, when making such an order.

Part 2 – Adoptions With A Foreign Element

29. Under Part 2 the Secretary of State may impose restrictions on intercountry adoptions from the country concerned.
30. *Subsection (1)* says that clause 6 applies if the Secretary of State believes that because of practices in a particular country connected with adoption (such as the trafficking of children or the removal of children from their parents without consent) it would be contrary to public policy for her to further the bringing of children from that country into the United Kingdom in specified cases.
31. The two types of cases are specified in *subsection (2)*. Both apply to British residents, a term defined in *subsection (10)* as someone habitually resident in the British Islands.
32. The cases are where, under *paragraph (a)* the British resident wishes to bring or to cause another person to bring a child who is not a British resident into the United Kingdom for the purposes of adoption by the British resident and there have been some dealings with the country that has given rise to concern; and under *paragraph (b)* where the British resident wishes to bring or to cause another to bring a child into the United Kingdom having adopted the child abroad within six months of the date on which he brings the child in.
33. Both these cases mirror those set out in section 56A of the Adoption Act 1976 as amended and section 83 of the Adoption and Children Act 2002. The section applies whether or not a country is a signatory to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption 1993.
34. Under *subsection (4)* the Secretary of State may declare that for the time being special restrictions are to apply, in relation to the country in question (the restricted country), in relation to bringing children into the United Kingdom in the circumstances set out in *subsection (2)*.
35. Provision concerning the special restrictions is made in *clause 7*.
36. The Secretary of State must consult the National Assembly for Wales before making any such declaration.

- 37.** The Secretary of State must publish her reasons for making the declaration (*subsection (5)*) and must also publish a restricted list, that is a list of restricted countries. She must keep the list up to date (*subsection (6)*) and publish both the list and the reasons for putting a country on the list in whatever way she thinks appropriate to bring them to the attention of adoption agencies and the public. The Secretary of State must cancel a declaration if she decides that the problems which caused her to make the declaration have been resolved.
- 38.** *Clause 7* is concerned with the special restrictions which apply to a restricted country when the Secretary of State makes a declaration under *clause 6(4)*.
- 39.** The special restrictions are to be set out in regulations which will be made by the Secretary of State after consulting the National Assembly for Wales (*subsection (1)*). The special restrictions will not be country specific. The intention is that the regulations will require the Secretary of State not take any of the steps which she might otherwise have taken in connection with bringing a child into the United Kingdom in the cases mentioned in *clause 6(2)*. The steps which the Secretary of State might have taken will be those provided for under an enactment (such as the issuing of a certificate of eligibility under section 56A of the Adoption Act 1976 as amended or section 83 of the Adoption and Children Act 2002) and administrative steps for which no statutory provision is made.
- 40.** *Subsection (3)* requires the regulations to make provision for exceptional cases to be allowed to proceed. Prospective adopters will have to satisfy the Secretary of State that notwithstanding the imposition of special restrictions the Secretary of State should take the steps she might have taken if the special restrictions had not been imposed. In considering whether a case is exceptional, consideration will be given to what is in the best interests of the child and all the facts of the particular case. Possible examples of exceptional cases could include a person seeking to adopt a relative from the restricted country, a person seeking to adopt a child in circumstances where the concerns that led to the special restrictions would be mitigated by the best interests of a child, or a person seeking to adopt a sibling of a child that person has previously adopted.
- 41.** *Clause 8* is concerned with the imposition of extra conditions in certain cases. By *subsection (1)(a)* the regulations may make provision for the Secretary of State to include in the restricted list under *clause 6* against a restricted country a step which is not provided for in any enactment, but which as a result of the administrative arrangements made with the restricted country she normally takes in connection with the bringing in of a child where that country is involved. The step in question might, for example, be forwarding a matching report, or a visa. *Paragraph (b)* says that the regulations may provide that where a step has been specified in relation to a restricted country one or more conditions set out in the regulations (such as the issuing of a notification to the prospective adopter) are to be met in respect of a child brought into the country in the circumstances set out in *clause 6(2)*. The conditions are to be in addition to conditions which would have to be met under section 83 of the Adoption and Children Act 2002 or any other enactment.

- 42. *Subsection (3)* makes it an offence to bring a child into the United Kingdom if a condition under *subsection (1)(b)* is not met. But, by virtue of *subsection (4)*, no offence is committed if the step referred to in the restricted list has been taken when the declaration is made under *clause 6(4)*.
- 43. *Subsection (5) and (6)* make provision for penalties where an offence is committed under this clause.

Part 3 – Miscellaneous and Final

- 44. This part makes general provisions, including providing (through *Schedule 2*) for a number of minor and consequential amendments. It also provides for regulations under this Bill to be made by the negative resolution procedure.

PUBLIC SECTOR FINANCIAL COST

- 45. For illustrative purposes, we assume that measures on contact orders will reduce enforcement applications by a maximum of up to 80%, reducing the annual caseload for enforcement applications from around 7,000 per year to around 1,400.
- 46. While we cannot be certain how often the new disposals open to courts would be used, we offer illustrative costings below based on different assumptions about future usage.
- 47. From analysis of 300 court files, around 60% of contact cases include one or more parties that are legally aided. This would give an annual estimate of 4,200 repeat applications regarding enforcement which would attract legal aid funding. For the purposes of illustration, the figure of 60% is used to estimate the proportion of parties whose attendance on contact activities will be publicly funded.
- 48. If we assume 20% of repeat applications to the courts for enforcement would result in one or both of the parents being referred to contact activities, this would result in a cost to Government of between around £11,000 and £105,000 a year for the activities depending on the level of the future reduction in applications.
- 49. If we assume 50% of repeat applications to the courts for enforcement would result in one of the parents being referred to contact activities, this would result in a cost to Government of between around £26,000 and £263,000 for the activities depending on the level of the future reduction in applications.
- 50. The cost for community based work orders is £2,000 for an order for 80 hours of unpaid work.¹ The cost for the curfew monitoring service is £135 fixed charge per order with £8 per day of monitoring. The cost of a breach is £100.²
- 51. If we assume parents in 1% of cases where an application for enforcement is made are required by the court to carry out community-based work or adhere to a curfew, this would result in a cost to Government of between £16,000 and £78,000 per year³.

1 Home Office estimate based on 5-6 hours per day for 16 days. Includes fixed cost and daily supervision fee.

2 Home Office figures.

3 Based on half doing unpaid work at a cost of £2,000 per order, and half doing curfews with 10 days of monitoring at a cost of £215 per order.

- 52. If we assume parents in 3% of cases where an application for enforcement is made are required by the court to carry out community-based work or adhere to a curfew, this would result in a cost to Government of between £48,000 and £234,000 per year.
- 53. Measures on suspension of intercountry adoption are not expected to have any cost except in terms of staff time at the Department for Education and Skills.

EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER

- 54. We do not anticipate that the provisions in the Bill will have a significant effect on public service manpower.

SUMMARY OF REGULATORY IMPACT ASSESSMENT

- 55. A regulatory impact assessment (RIA) has been produced to accompany the Bill and is available on www.dfes.gov.uk/childrensneeds.
- 56. There are a number of potential costs to Government associated with the implementation of Part 1 of the Bill, depending on the frequency with which the new provisions are used by the judiciary. These costs are set out under 'public sector financial cost' above. There will also be some costs to parents and families, with those who can afford it being expected to pay the cost of contact activities which the courts require them to participate in.
- 57. There are overall savings anticipated from the implementation of the Green Paper programme as a whole, which goes beyond the measures in this Bill. Taken as a whole, it is expected that the measures in the Green Paper will result in a reduction in the number of cases reaching court, as better information and advice and alternative dispute resolution mechanisms are made available. It is also anticipated that the measures, including those in this Bill, will help to reduce the numbers of repeat applications and applications for enforcement.
- 58. It is estimated that the maximum reduction in overall caseload would be around 60%, which would represent a maximum overall saving of up to £76.8 million per year.
- 59. The RIA does not contain references to the provisions in the draft Bill on intercountry adoption as these will not impact significantly on businesses, charities or the voluntary sector.

COMMENCEMENT DATES

- 60. The commencement clause provides for the clauses to be commenced by order of the Secretary of State, after consultation with the National Assembly for Wales.

EUROPEAN CONVENTION ON HUMAN RIGHTS

- 61. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The statement has to be made before second reading.

- 62.** There is not believed to be anything in the draft Bill which conflicts with the Convention rights.
- 63.** It is considered that the ability to require a person to undertake a contact activity would not interfere with that person’s Article 6 or 8 rights. Such a requirement would not of itself mean that the case before the court would not be concluded in due course. If a person’s Article 8 rights were engaged by the making of a contact activity direction or contact activity condition, it is considered that those rights would not be infringed, as the direction or condition would be justified since it pursues a legitimate objective, would be in accordance with the law, and would be a proportionate response to the objective, in that would be a reasonable way to seek to ensure contact in the best interests of a child may be facilitated.
- 64.** In relation to enforcement orders, appropriate procedural safeguards will be put in place to ensure the Article 6 rights of those affected are not infringed. Such orders might engage a person’s Article 8 rights. However, it is considered that there would not be an infringement of such rights, particularly in light of the range of matters of which courts will have to be satisfied before imposing such orders.
- 65.** While a person’s Article 8 rights might be engaged where there is suspension of intercountry adoption from a particular country, the regulations under clause 7 must make provision for exceptional cases. In considering an application from prospective adopters that their case should proceed notwithstanding the suspension, the Secretary of State must take into account their Convention rights.

Annex to Explanatory Notes

Table of powers, duties and responsibilities which the Bill confers on the National Assembly for Wales

PROVISION	EFFECT
Clause 1 (inserting section 11C(9) CA 1989)	Power to make regulations regarding the circumstances in which the Assembly may assist a person in paying the costs associated with a contact activity.
Clause 6(4)	Requirement for the Secretary of State to consult the National Assembly for Wales before making a declaration of special restrictions on adoptions from abroad.
Clause 7(1)	Requirement for the Secretary of State to consult the National Assembly for Wales prior to making regulations about special restrictions.
Clause 11(3)	Before commencing the Act, the Secretary of State must consult the National Assembly for Wales

Regulatory Impact Assessment

PURPOSE AND INTENDED EFFECT OF MEASURES

Objectives

1. The draft Children (Contact) and Adoption Bill makes provision to improve arrangements to underpin and enforce contact orders for those undergoing parental separation. This is part of a package of measures proposed in the Green Paper *Parental Separation: Children's Needs and Parents' Responsibilities*, and needs to be seen within that context.
2. This RIA does not contain references to the provisions in the draft Bill on intercountry adoption as these will not impact significantly on businesses, charities or the voluntary sector.

Facilitation of Contact and Enforcement of Contact Orders: Background

3. Parental separation affects many children and their families. Some three million of our twelve million children will experience the separation of their parents during the course of their childhood. Each year we estimate that between 150,000-200,000 parental couples separate who have been married or cohabiting. If separation is handled well, any adverse impact on their children may be limited, in terms of both time and severity. Many children of separated parents thrive and flourish. But when separation goes badly and in particular, where children are drawn into parental conflict, then the effects can be damaging for children. Evidence shows that children in this situation suffer poorer outcomes and reduced life-chances. They are more likely to achieve less at school, to truant or to run away from home. If, however, parents are able to resolve their differences about parenting issues at the time of separation and then subsequently, these risks can be reduced. The Government firmly believes that every child should have the opportunity to fulfil their potential and to grow up in a loving and secure family.
4. The legal and court process can be slow and adversarial which can contribute to a deterioration of the situation between separating couples. It can also result in the voices of the children involved being overlooked.

5. Court decisions based on past circumstances may not always provide workable long-term solutions. The resolution of family issues is not a one-off event; it is an on-going process that parents need to work at over the long term. As circumstances change, orders may need to be varied. Other cases that return to court may be due to non-compliance with the court order. At present, a number of cases keep returning to court and the courts may find it hard to resolve them.
6. Judges have powers to respond to breaches of the terms of contact orders, by imposing fines or by committing to prison for contempt of court those who have disregarded orders. Magistrates have similar statutory powers. However, these punitive measures are sometimes difficult to use as they may have an adverse consequential impact on the child. The judiciary and others have pressed for wider, more flexible, ways to facilitate and enforce compliance.
7. The proposals within the draft Bill are part of a wider programme of reform of the family justice system for private law cases. An earlier partial RIA was published on 21 July 2004 to accompany the Green Paper *Parental Separation: Children's Needs and Parents' Responsibilities*, setting out that agenda. This showed how these proposals would be taken forward so as to be resource neutral overall. That same principle applies to the proposals covered within this draft Bill and RIA. The proposals here are aimed at improving the effectiveness and thus the efficiency of dealing with conflicted contact cases. Costs of the new disposals will be met from reduced expenditure on the repeated contested contact cases that would otherwise take place.

Risk Assessment

8. The main risk is to children whose families are separating and whose parents turn to the courts to resolve the situation. Without adequate options available to the courts, there are risks that the solutions identified where contact orders are breached may be disproportionate, or that nothing will be done to enforce the order at all. This results in the courts' determinations about the steps that should be taken in order to meet the needs of the children being disregarded, with potential adverse effects on the children's welfare.

Options

Option 1 – Do Nothing

9. The present system and services would remain unchanged. Parents would still have access to existing forms of help from public sector services, the legal profession and other advice and voluntary agencies, which work with families and children in such situations.
10. DCA's SR2004 bid forecasts that contact applications will rise by 4-4.5% per annum, over the three years post 2004/05. This forecast was arrived at from an internal analysis of projected historical trends. This will lead to increasing system costs. If contact applications increase year on year by 4.5%, it is projected that costs will increase from £195 million in 2004/05 to £222 million by 2007/08.

Option 2 – Implement Green Paper proposals, including providing courts with additional powers to underpin and enforce contact orders

11. The Green Paper proposals are designed to improve the system whereby parents make arrangements for their children after separation. They aim to improve the delivery of services to families and reduce the risks outlined in this impact assessment. Good contact is dependent not on one-off resolution, but on an ongoing process of co-operation between parents over the longer term. Our proposals therefore focus on providing parents with help to reach durable agreements and to be able to access help and support beyond the point of initial disagreement.
12. Of those cases which do reach the courts, there are a small number where there is a failure to comply with the terms of court orders. Thus, additional enforcement mechanisms are needed by the courts, despite the range of improved compliance measures available.
13. Both the senior judiciary and others are clear that reform in this area is needed and want legislation brought forward to introduce a more flexible range of enforcement provisions, along the lines of those recommended by the Children Act Sub-Committee's (CASC) Report 'Making Contact Work'. The report's authors were clear that new methods of enforcement were needed and that legislation was required in order to effect the recommended changes. The Government has accepted this recommendation.
14. This draft Bill provides the courts with additional facilitation and enforcement powers, the costs and benefits of which are considered below, drawn from the recommendations of the CASC report. These new powers will provide a fuller range of appropriate options, namely:
 - the ability to direct parties to a contact case to attend information sessions, meetings with a counsellor, or programmes/classes or other activities which are designed to deal with contact issues
 - attachment of conditions to contact orders which may require attendance at such meetings, classes or programmes

Where a contact order has been breached:

- imposition of "enforcement orders" for unpaid work or curfew
 - the award of financial compensation from one parent to another (for example where the cost of a holiday has been lost)
15. Courts will retain their current powers to commit to prison or fine those in breach of orders.
 16. The new provisions mean that courts will be able to require attendance on contact activities, either by making a direction to this effect, or by attaching a condition to a contact order. This will provide additional flexibility to facilitate the making of contact arrangements and ensure they are workable. In addition, powers will be available for courts to enforce compliance with contact orders by making "enforcement orders" for unpaid work or curfew.

- 17.** In an analysis of 300 court files carried out by the Department for Constitutional Affairs there was at least one repeat application in around one half of cases. Of these around one third were made because of the alleged breach of the court-ordered arrangements. This proportion is expected to reduce as the additional enforcement measures are introduced.

Costs and Benefits

Doing nothing

- 18.** The proposals in the Green Paper form a coherent package of support for families going through the separation process. The proposals for enforcement of contact orders in the draft Bill are a key part of the Green Paper proposals. If we do nothing, then the forecast growth in costs associated with the anticipated increasing number of contact applications (4 – 4.5% per annum, over the three years post 2004/05) will not be reduced. We have estimated that on this growth, costs will increase from a current level of £195.4 million p.a. in 2003/04, to £222.9 million p.a. in 2007/08. If this upward trend continues, by 2014/15 (year 10 of planned implementation of the proposals), costs will have increased to £303.4 million p.a.

Additional powers for courts to underpin and enforce contact orders as part of wider Green Paper package

- 19.** Providing the courts with additional flexibility as set out above will have a varying impact on different stakeholders.

Advice and help agencies: Parentline, Relate, Others

- 20.** The Government intends to work in partnership with existing information and advice providers in order to improve provision of services. The Government is supporting various organisations on whom this legislation will impact:
- Through the Parenting Fund for 2004-5, 2005-6 a grant of £4.7m was awarded over two years to fund parenting helpline provision. Organisations funded through this route are Parentline Plus, One Parent Families, Advisory Centre for Education, Children's Legal Centre and Young Minds.
 - £3.5m has been granted (covering the period 2003/4 to 2005/6) for a joint DfES/Sure Start Joint Investment Fund to support child contact services including establishing 14 new supervised child contact centres. This is aimed to address regional gaps in service provision. There are currently 520 voluntary run child contact centres in England and Wales.
 - The National Association of Child Contact Centres received £100,000 from the Parenting Fund for 2005-6 for a rolling training programme across its 318 member centres.
 - The Parent Education and Support Forum is working with the DfES on the Family Resolutions Pilot Project, and have received £150,000 jointly with Relate to run parenting group work sessions under the pilot.

The Judiciary

- 21.** The provisions proposed for the Bill reflect proposals by the judiciary for greater flexibility in addressing situations where the terms of a contact order are breached. This should allow them to make judgments that are better tailored to the particular circumstances of each case. An analysis of 300 court files in contact cases carried out by the Department for Constitutional Affairs shows around half of all applications are repeats and around one third of these are because of enforcement issues. We would expect the number of repeat applications to reduce following the introduction of the additional facilitation and enforcement measures.

Government

- 22.** In 2003/4 there were 40,000 contact applications of which we assume around one half (20,000) would be repeat applications, of which one third (around 7,000) would be for enforcement⁴.
- 23.** The Green Paper contains a range of measures to ensure that contact works better, including:
- promotion of mediation
 - extension of in-court conciliation
 - the Family Resolutions Pilot Project
 - improvement of case management by the courts
 - improved post-order follow-up
 - support for child contact centres.
- 24.** The package of measures proposed in the Green Paper should ensure that fewer cases brought to court are repeat applications as other interventions will be more readily available. If, as was assumed in the RIA for the Green Paper, a maximum reduction of 60%⁵ in the overall caseload was achieved, at a 2003/4 average cost of £3,200 per case, this would represent a saving of up to around £76.8 million per year. Even if the only reduction achieved were to avoid the growth predicted if we do not implement the Green Paper proposals, a saving of around £5.12 million per year would be made by 2007/08.
- 25.** For illustrative purposes, we assume that these measures will reduce enforcement applications by a maximum of up to 80%, reducing the annual caseload for enforcement applications to around 1,400.
- 26.** While we cannot be certain how often the new disposals open to courts would be used, we offer illustrative costings below based on different assumptions about future usage.
- 27.** Where people are referred to contact activities, we expect the cost of the activity to be met by the person in question. The draft Bill includes a regulation making power to enable regulations to be made specifying when a person may receive assistance in meeting such costs. We therefore expect Government will pay for activities where the person has a low income.

4 Figures derived from the DCA Consumer Strategy.

5 The 60% reduction in caseload is a highest ambition which illustrates the potential savings, should most cases (apart from those where safety and those involving the highest conflict) be diverted from the courts.

- 28.** The estimated cost per group class is:
- Group parenting class – £15.65 per parent per hour.⁶
 - Perpetrator programmes – around £220 per group session.
- 29.** From analysis of 300 court files around 60% of parties in contact cases were legally aided. Assuming the same proportion of people involved in enforcement applications are legally aided, this would give an annual estimate of 4,200 repeat applications made because of alleged breach of the court-ordered arrangements which would attract legal aid funding. The cost to Government given below therefore assumes that 60% of parents attending contact activities will be publicly funded.
- 30.** If we assume 20% of repeat applications to the courts for enforcement would result in one or both of the parents being referred to contact activities, this would result in a cost to Government of between around £11,000 and £105,000 a year for the activities depending on the level of the future reduction in applications.
- 31.** If we assume 50% of repeat applications to the courts for enforcement would result in one of the parents being referred to contact activities, this would result in a cost to Government of between around £26,000 and £263,000 for the activities depending on the level of the future reduction in applications.
- 32.** The cost for community based work orders is £2,000 for an order for 80 hours of unpaid work.⁷ The cost for the curfew monitoring service is £135 fixed charge per order with £8 per day of monitoring (for illustrative purposes only, this assumes monitoring is done through electronic monitoring).⁸
- 33.** If we assume parents in 1% of cases where an application for enforcement is made are required by the court to carry out community-based work or adhere to a curfew, this would result in between around £16,000 and £78,000 being required from the Government per year.⁹
- 34.** If we assume parents in 3% of cases where an application for enforcement is made are required by the court to carry out community-based work or adhere to a curfew, this would result in between around £48,000 and £234,000 being required from the Government per year.
- 35.** We anticipate that the use of the new measures will reduce the need for imposition of prison terms for contempt of court. The total amount saved will of course depend on future usage of the new sanctions in place of prison terms, but a saving of around £700 per case is expected, based on a committal of 1 week.¹⁰

6 Based on figures supplied by the Parenting Education and Support Forum. Cost per hour includes programme design and planning, group facilitation, childcare, accommodation, recruitment, catering, transport, supervision for facilitators, and national and local parenting forum support. Cost estimates below are based on a course of four one hour sessions.

7 Home Office estimate based on 5-6 hours per day for 16 days. Includes fixed cost and daily supervision fee.

8 Home Office figures.

9 Based on half doing unpaid work at a cost of £2,000 per order, and half doing curfews with 10 days of monitoring at a cost of £215 per order.

10 Based on cost of a new prison place, approximately £37,000 a year (Home Office figures).

Parents and families

- 36.** Parents and families will benefit from the use of contact activity programmes and courses to tailor arrangements to each individual case. They will also benefit from reduced need to use contempt of court sanctions in the form of fines or imprisonment in the event of breach of the terms of a contact order.
- 37.** As mentioned above, where people are referred to contact activities, we expect the cost of the activity to be met by the person in question, subject to regulations providing that the person receives assistance with the costs. If around 60% of activities are funded by the Government (as noted above, used here as an illustration in line with legal aid recipients), around 40% of those going on activities will be required to pay the cost of the activity. The costs range from £15.65 per parent per hour for group parenting courses or information meetings and approximately £220 per session for Perpetrator Programmes (addressing domestic violence issues).

CAFCASS

- 38.** CAFCASS will take on the role of:
- advising courts on what provision is available in the local area, before a court directs a person to undertake a contact activity, or makes an order on condition that they do so, or makes an enforcement order;
 - monitor, and report to the court on, compliance with a contact activity;
 - monitor, facilitate and report to the court on, compliance with a contact order;
 - monitor, and report to the court on, compliance with an enforcement order.
- 39.** This role has been discussed with CAFCASS, and it is anticipated that no additional resources would be needed, as most CAFCASS officers would be aware of information relating to programmes in an area through the course of their normal work, and would not require additional research to advise the court. The same applies as regards monitoring/facilitating compliance with contact orders, and notifying courts of a breach of a contact activity or an enforcement order, since the actual monitoring of these will be carried out by those directly involved in their administration, who will in turn notify CAFCASS.

The Court Service

- 40.** The Court Service will benefit from access to a greater range of disposals and greater flexibility in facilitating contact and enforcing contact orders.
- 41.** No additional costs to the Court Service are anticipated.

COSTINGS – KEY ASSUMPTIONS

- 42.** We assume that between 150,000 and 200,000 relationships involving children break down every year.
- 43.** There were 40,000 contact applications made to the courts in 2003/4.

44. Data from the ONS Omnibus Survey shows that approximately 10% of parents use the courts to resolve contact disputes. An analysis of a sample of 300 court files carried out by the Department for Constitutional Affairs shows that around half come to court only once.
45. Of the one half that are repeat applications, the DCA analysis of 300 court files shows that the proportion of these applications which are for enforcement are around one third.
46. The DCA court file analysis suggested that around 60% of parties involved in contact cases passing through the courts have legal aid funding.
47. In 2003/4 the average cost per case was £3,200.
48. The cost of a group parenting class is £15.65 per parent per hour. We assume that a typical course involves four one hour sessions.
49. Perpetrator programmes cost about £220 per group session.
50. Community based work orders cost approximately £2,000 for 80 hours of unpaid work, which we assume is a typical length for such a penalty.
51. The cost for monitoring of a curfew orders is £135 fixed charge per order with £8 per day of monitoring.
52. We assume that the saving per case where imprisonment is used would be approximately £700, based on a committal of one week and a new prison place costing approximately £37,000 per year.

SUSTAINABLE DEVELOPMENT

53. We have considered the issue of sustainable development when analysing the costs and benefits of our policy proposals, and are satisfied that there will only be long term social benefits and no long term social, environmental or economic costs.

ISSUES OF EQUITY AND FAIRNESS

54. The Green Paper, and within it the proposals relating to underpinning and enforcement of contact orders, addresses the already existing problems that some children of separated parents can experience in later life. The Government does not believe that the implementation of these proposals will create any further risk or inequities to those children.
55. The implementation of the proposals will not create any undue or disproportionate impact on the sectors identified in this impact assessment.

CONSULTATION WITH SMALL BUSINESS: THE SMALL FIRMS IMPACT TEST

- 56.** A number of small businesses including mediation firms, solicitors, and voluntary sector organisations responded to the consultation on the Green Paper. None indicated that they expected any adverse impact on their business as a result of the proposals, and we do not anticipate that any particular business type will be disadvantaged as a result of the enforcement provisions. There will be a potential advantage to some providers of the courses and programmes to which courts will be able to refer those involved in contact proceedings.

COMPETITION ASSESSMENT

- 57.** The proposals in relation to facilitation of contact and enforcement of contact orders are likely to have little or no effect on competition for solicitors and mediation firms. No one firm has more than 10% of the anticipated market and existing firms will not be at an advantage over new or potential firms. The Competition filter has been completed and the result indicated that there would be no negative effects on firms.

ENFORCEMENT AND SANCTIONS

- 58.** At present, courts can enforce contact orders under the law of contempt, through fines and the power to commit to prison those who have disregarded orders (or equivalent statutory powers in the Magistrates' Court). However, the provisions in the draft Bill provide a more flexible range of facilitative and enforcement methods. These will give courts the power to refer parents to a variety of new measures to facilitate the making of contact arrangements and to improve compliance with contact orders.

MONITORING AND REVIEW

- 59.** Once proposals have been in place for three years, we intend to monitor the use of the new powers and compare the number of applications made currently to those under the new powers. One way we would measure success is by a reduction in the number of court orders and repeat applications.

CONSULTATION

- 60.** Pre-consultation we have involved key interests, including parent groups, academics and voluntary organisations, and those involved in providing current services such as the judiciary, legal professionals and CAFCASS in developing these proposals. These consultations were led at Ministerial level and involved written evidence and a wide range of meetings. The senior judiciary and CAFCASS have been closely involved in the development of these proposals and support them. Consultation on the Green Paper itself closed on 1 November 2004.
- 61.** There was strong support in the responses to the Green Paper consultation for action on providing the courts with better enforcement mechanisms for contact orders, with many respondents agreeing that the courts needed ‘more imaginative’ powers to deal with the issue of non-compliance.

Contact details

Comments on the provisions in the draft Bill should be directed to:

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