



Draft legislation on Family Justice

Presented to Parliament
by the Secretary of State for Education
by Command of Her Majesty

September 2012



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Contents

Foreword	5
Provisions about Family Justice	7
Explanatory notes	33

Foreword

In February 2012 we published our response to David Norgrove's Family Justice Review. The review described a family justice system that was characterised by delay, expense, bureaucracy and lack of trust. Our response described how we would tackle those problems, which we know can be harmful to the children and families involved. The draft legislation set out in this document is the next step in bringing those proposals into effect and is supported by the Department for Education and the Ministry of Justice.

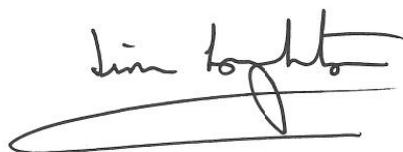
In public law cases, the legislative changes would reduce delay and duplication. A maximum time limit of 26 weeks would establish the timetable for completing care and supervision proceedings, unless an extension was required. The legislative reforms would make explicit that case management decisions should consider the impact on the welfare of the child and on the timetable for the case. They would also make clear that the court should focus only on the provisions of the care plan that set out the long term plan for the upbringing of the child.

The unnecessary requirement for interim care and supervision orders to be renewed after eight weeks, and then subsequently every four weeks, would be removed. Instead, the court would be allowed to set the length of interim orders for an appropriate period, up to the expected time limit. Courts would also be required to have regard to, amongst other things, the impact on the welfare of the child, and the timetable, duration and conduct of the proceedings, when deciding whether expert evidence is needed.

In private family law cases, the person proposing to make a court application would be required to attend a family mediation information and assessment meeting before going to court, unless an exemption applied. Contact and residence orders would be replaced with new child arrangement orders.

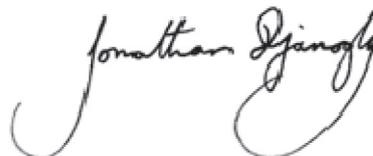
In addition, the draft legislation would repeal provisions requiring the court in divorce proceedings to consider arrangements made for children of the family. It would also repeal the unimplemented divorce provisions of Part II of the Family Law Act 1996, which would assist with plans to allow for uncontested divorces to be dealt with administratively.

These important changes will improve a system that too often fails the children, young people and families it should serve. It is intended that they would form part of the package of children and families legislation announced in the Queen's speech.

A handwritten signature in black ink, appearing to read 'Tim Loughton', with a long horizontal flourish underneath.

Tim Loughton MP

Parliamentary Under Secretary of
State for Children and Families

A handwritten signature in black ink, appearing to read 'Jonathan Djanogly', with a large, sweeping flourish underneath.

Jonathan Djanogly MP

Parliamentary Under Secretary of
State for Justice

Provisions about Family Justice

CONTENTS

- 1 Family mediation information and assessment meetings
- 2 Child arrangements orders
- 3 Control of expert evidence, and of assessments, in children proceedings
- 4 Time limits in proceedings for care or supervision orders
- 5 Care plans
- 6 Care proceedings and care plans: regulations: procedural requirements
- 7 Repeal of restrictions on divorce and dissolution etc where there are children
- 8 Repeal of uncommenced provisions of Part 2 of the Family Law Act 1996
- 9 Commencement and extent

Schedule 1 – Child arrangements orders: amendments

1 Family mediation information and assessment meetings

- (1) Before making a relevant family application, a person must attend a family mediation information and assessment meeting.
- (2) Family Procedure Rules –
 - (a) may provide for subsection (1) not to apply in circumstances specified in the Rules,
 - (b) may make provision about convening a family mediation information and assessment meeting, or about the conduct of such a meeting,
 - (c) may, in relation to cases where a person makes or seeks to make a family application, make provision about the determination by the court, or by an officer of the court, of –
 - (i) whether subsection (1) applies, and
 - (ii) if subsection (1) does apply, whether it has been complied with, and
 - (d) may make provision for the court, or an officer of the court, to refuse to deal with any application in relation to which it is determined that, in contravention of subsection (1), the applicant has not attended a family mediation information and assessment meeting.
- (3) Provision as mentioned in paragraph (c) of subsection (2) may, in particular, include provision for the court, or an officer of the court, to make a determination mentioned in that paragraph after considering only evidence of a description specified in Family Procedure Rules.
- (4) In this section –
 - “the court” means the High Court or the family court;
 - “family application” means an application made to the court in, or to initiate, family proceedings;
 - “family mediation information and assessment meeting”, in relation to a relevant family application, means a meeting held for the purpose of enabling information to be provided about –
 - (a) mediation of disputes of the kinds to which relevant family applications relate,
 - (b) ways in which disputes of those kinds may be resolved otherwise than by the court, and
 - (c) the suitability of mediation, or of any such other way of resolving disputes, for trying to resolve any dispute to which the particular application relates;
 - “family proceedings” has the same meaning as in section 75 of the Courts Act 2003;
 - “relevant family application” means a family application of a description specified in Family Procedure Rules.

- (5) This section is without prejudice to sections 75 and 76 of the Courts Act 2003 (power to make Family Procedure Rules).

2 Child arrangements orders

- (1) Section 8(1) of the Children Act 1989 is amended as follows.
- (2) Omit the definitions of “contact order” and “residence order”.
- (3) After “In this Act—” insert—
 ““child arrangements order” means an order regulating arrangements relating to any of the following—
 (a) with whom a child is to live, spend time or otherwise have contact, and
 (b) when a child is to live, spend time or otherwise have contact with any person;”.
- (4) Schedule 1 (amendments relating to child arrangements orders) has effect.

3 Control of expert evidence, and of assessments, in children proceedings

- (1) A person may not without the permission of the court instruct a person to provide expert evidence for use in children proceedings.
- (2) Where in contravention of subsection (1) a person is instructed to provide expert evidence, evidence resulting from the instructions is inadmissible in children proceedings unless the court rules that it is admissible.
- (3) A person may not without the permission of the court cause a child to be medically or psychiatrically examined or otherwise assessed for the purposes of the provision of expert evidence in children proceedings.
- (4) Where in contravention of subsection (3) a child is medically or psychiatrically examined or otherwise assessed, evidence resulting from the examination or other assessment is inadmissible in children proceedings unless the court rules that it is admissible.
- (5) In children proceedings, a person may not without the permission of the court put expert evidence (in any form) before the court.
- (6) The court may give permission as mentioned in subsection (1), (3) or (5) only if the court is of the opinion that the expert evidence is necessary to assist the court to resolve the proceedings justly.
- (7) When deciding whether to give permission as mentioned in subsection (1), (3) or (5) the court is to have regard in particular to—
 (a) any impact which giving permission would be likely to have on the welfare of the children concerned, including in the case of permission as mentioned in subsection (3) any impact which any examination or other assessment would be likely to have on the welfare of the child who would be examined or otherwise assessed,
 (b) the issues to which the expert evidence would relate,
 (c) the questions which the court would require the expert to answer,
 (d) what other expert evidence is available (whether obtained before or after the start of proceedings),

- (e) whether evidence could be given by another person on the matters on which the expert would give evidence,
 - (f) the impact which giving permission would be likely to have on the timetable, duration and conduct of the proceedings,
 - (g) the cost of the expert evidence, and
 - (h) any matters prescribed by Family Procedure Rules.
- (8) References in this section to providing expert evidence, or to putting expert evidence before a court, do not include references to –
- (a) the provision or giving of evidence –
 - (i) by a person who is a member of the staff of a local authority or of an authorised applicant,
 - (ii) in proceedings to which the authority or authorised applicant is a party, and
 - (iii) in the course of the person’s work for the authority or authorised applicant,
 - (b) the provision or giving of evidence –
 - (i) about the matters mentioned in subsection (1) of section 94 of the Adoption and Children Act 2002 (suitability for adoption etc.), and
 - (ii) by a person within a description prescribed for the purposes of that subsection,
 - (c) the provision or giving of evidence by an officer of the Children and Family Court Advisory and Support Service in that capacity, or
 - (d) the provision or giving of evidence by a Welsh family proceedings officer (as defined by section 35(4) of the Children Act 2004) in that capacity.
- (9) In this section –
- “authorised applicant” means –
 - (a) the National Society for the Prevention of Cruelty to Children, or
 - (b) a person authorised by an order under section 31 of the Children Act 1989 to bring proceedings under that section;
 - “child” means a person under the age of 18;
 - “children proceedings” has such meaning as may be prescribed by Family Procedure Rules;
 - “the court”, in relation to any children proceedings, means the court in which the proceedings are taking place;
 - “local authority” –
 - (a) in relation to England means –
 - (i) a county council,
 - (ii) a district council for an area for which there is no county council,
 - (iii) a London borough council,
 - (iv) the Common Council of the City of London, or
 - (v) the Council of the Isles of Scilly, and
 - (b) in relation to Wales means a county council or a county borough council.
- (10) The preceding provisions of this section are without prejudice to sections 75 and 76 of the Courts Act 2003 (power to make Family Procedure Rules).

- (11) In section 38 of the Children Act 1989 (court’s power to make interim care and supervision orders, and to give directions as to medical examination etc. of children) after subsection (7) insert –
- “(7A) A direction under subsection (6) to the effect that there is to be a medical or psychiatric examination or other assessment of the child may be given only if the court is of the opinion that the examination or other assessment is necessary to assist the court to resolve the proceedings justly.
- (7B) When deciding whether to give a direction under subsection (6) to that effect the court is to have regard in particular to –
- (a) any impact which any examination or other assessment would be likely to have on the welfare of the child, and any other impact which giving the direction would be likely to have on the welfare of the child,
 - (b) the issues with which the examination or other assessment would assist the court,
 - (c) the questions which the examination or other assessment would enable the court to answer,
 - (d) the evidence otherwise available,
 - (e) the impact which the direction would be likely to have on the timetable, duration and conduct of the proceedings,
 - (f) the cost of the examination or other assessment, and
 - (g) any matters prescribed by Family Procedure Rules.”

4 Time limits in proceedings for care or supervision orders

- (1) Section 32 of the Children Act 1989 (disposal of application for care or supervision order) is amended as follows.
- (2) In subsection (1)(a) (timetable to dispose of application without delay) for “application without delay; and” substitute “application –
- (i) without delay, and
 - (ii) in any event within twenty-six weeks beginning with the day on which the application was issued; and”.
- (3) After subsection (2) insert –
- “(3) A court, when drawing up a timetable under subsection (1)(a), must in particular have regard to –
- (a) the impact which the timetable would have on the welfare of the child to whom the application relates; and
 - (b) the impact which the timetable would have on the conduct of the proceedings.
- (4) A court, when revising a timetable drawn up under subsection (1)(a) or when making any decision which may give rise to a need to revise such a timetable (which does not include a decision under subsection (5)), must in particular have regard to –
- (a) the impact which any revision would have on the welfare of the child to whom the application relates; and
 - (b) the impact which any revision would have on the duration and conduct of the proceedings.

- (5) A court in which an application under this Part is proceeding may extend the period that is for the time being allowed under subsection (1)(a)(ii) in the case of the application, but may do so only if the court considers that the extension is necessary to enable the court to resolve the proceedings justly.
- (6) When deciding whether to grant an extension under subsection (5), a court is to take account of the following guidance: extensions are not to be granted routinely, but are to be seen as exceptional and as requiring specific justification.
- (7) Each separate extension under subsection (5) is to end no more than eight weeks after the later of –
 - (a) the end of the period being extended; and
 - (b) the end of the day on which the extension is granted.
- (8) The Lord Chancellor may by regulations amend subsection (1)(a)(ii), or the opening words of subsection (7), for the purpose of varying the period for the time being specified in that provision.
- (9) Rules of court may provide that a court –
 - (a) when deciding whether to exercise the power under subsection (5), or
 - (b) when deciding how to exercise that power,
 must, or may or may not, have regard to matters specified in the rules, or must take account of any guidance set out in the rules.”
- (4) In subsection (1) (court’s duty, in the light of rules made by virtue of subsection (2), to draw up timetable and give directions to implement it) –
 - (a) for “hearing an application for an order under this Part” substitute “in which an application for an order under this Part is proceeding”, and
 - (b) for “rules made by virtue of subsection (2))” substitute “provision in rules of court that is of the kind mentioned in subsection (2)(a) or (b))”.
- (5) In section 38 of the Children Act 1989 (interim care and supervision orders) –
 - (a) in subsection (4) (duration of interim order) omit –
 - (i) paragraph (a) (order may not last longer than 8 weeks), and
 - (ii) paragraph (b) (subsequent order generally may not last longer than 4 weeks),
 - (b) in that subsection after paragraph (d) insert –
 - “(da) in a case which falls within subsection (1)(b) and in which –
 - (i) no direction has been given under section 37(4), and
 - (ii) no application for a care order or supervision order has been made with respect to the child,
 the expiry of the period of eight weeks beginning with the date on which the order is made;”, and
 - (c) omit subsection (5) (interpretation of subsection (4)(b)).

5 Care plans

- (1) For section 31(3A) of the Children Act 1989 (no care order to be made until court has considered section 31A care plan) substitute –

- “(3A) A court deciding whether to make a care order –
- (a) is required to consider the permanence provisions of the section 31A plan for the child concerned, but
 - (b) is not required to consider the remainder of the section 31A plan.
- (3B) For the purposes of subsection (3A), the permanence provisions of a section 31A plan are such of the plan’s provisions setting out the long-term plan for the upbringing of the child concerned as provide for any of the following –
- (a) the child to live with any parent of the child’s or with any other member of, or any friend of, the child’s family;
 - (b) adoption;
 - (c) long-term care not within paragraph (a) or (b).
- (3C) The Secretary of State may by regulations amend this section for the purpose of altering what for the purposes of subsection (3A) are the permanence provisions of a section 31A plan.”
- (2) In section 31A of the Children Act 1989 (care plans) –
- (a) in subsection (1) (where application made for care order, care plan to be prepared within such time as the court may direct) for “the court may direct” substitute “may be prescribed”, and
 - (b) after subsection (4) insert –
- “(4A) In this section “prescribed” –
- (a) in relation to a care plan whose preparation is the responsibility of a local authority for an area in England, means prescribed by the Secretary of State; and
 - (b) in relation to a care plan whose preparation is the responsibility of a local authority in Wales, means prescribed by the Welsh Ministers.”
- (3) In consequence of subsection (1), section 121(1) of the Adoption and Children Act 2002 is repealed.

6 Care proceedings and care plans: regulations: procedural requirements

- (1) In section 104 of the Children Act 1989 (regulations and orders) –
- (a) in subsections (2) and (3A) (regulations within subsection (3B) or (3C) not subject to annulment but to be approved in draft) after “(3B)” insert “, (3BA)”, and
 - (b) after subsection (3B) insert –
- “(3BA) Regulations fall within this subsection if they are regulations made in the exercise of the power conferred by section 31(3C) or 32(8).”
- (2) In section 104A(1) of the Children Act 1989 (regulations made by the Welsh Ministers to be made by statutory instrument) after “Part 3,” insert “section 31A,”.

7 Repeal of restrictions on divorce and dissolution etc where there are children

- (1) The following are repealed –

- (a) section 41 of the Matrimonial Causes Act 1973 (in proceedings for divorce etc. court is to consider whether to exercise powers under Children Act 1989);
 - (b) section 63 of the Civil Partnership Act 2004 (in proceedings for dissolution etc. court is to consider whether to exercise powers under Children Act 1989).
- (2) The following amendments and repeals are in consequence of the repeals made by subsection (1).
 - (3) In section 9(1)(a) of the Matrimonial Causes Act 1973 (proceedings after decree of divorce: power to make decree absolute is subject to section 41) –
 - (a) for “sections” substitute “section”, and
 - (b) omit “and 41”.
 - (4) In section 17(2) of that Act (grant of decree of judicial separation is subject to section 41) omit “, subject to section 41 below,”.
 - (5) Omit section 36B(1)(a)(i) of the Matrimonial and Family Proceedings Act 1984 (civil partnership proceedings county court to have jurisdiction under section 63 of the Civil Partnership Act 2004) including the “or” following it.
 - (6) Omit paragraph 31 of Schedule 12 to the Children Act 1989 (which substitutes section 41 of the Matrimonial Causes Act 1973).
 - (7) In section 40(4)(b) of the Civil Partnership Act 2004 (proceedings after conditional order: power to make order final is subject to section 63) omit the words from “and section 63” to the end.
 - (8) In section 56(3) of that Act (making of separation order is subject to section 63) omit “, subject to section 63,”.

8 Repeal of uncommenced provisions of Part 2 of the Family Law Act 1996

- (1) Part 2 of the Family Law Act 1996 (divorce and separation), except section 22 (the only provision of Part 2 which is in force), is repealed.
- (2) In consequence of subsection (1), the following provisions of the Family Law Act 1996 (which relate to provisions of Part 2) are repealed –
 - (a) section 1(c) and (d),
 - (b) section 63(2)(a),
 - (c) section 64(1)(a),
 - (d) in section 65(3), the words “5(8) or”,
 - (e) section 65(4),
 - (f) in section 65(5) the words “to rules made under section 12 or”,
 - (g) Part 1 of Schedule 8, except –
 - (i) paragraph 16(5)(a), (6)(b) and (7) (which have been brought into force), and
 - (ii) paragraphs 4 and 16(1) (which relate to those provisions),
 - (h) in Schedule 9, paragraphs 1 and 2 and, in paragraph 4, the definitions of “decree”, “instrument” and “petition”, and
 - (j) in Schedule 10, the entries relating to –
 - (i) the Matrimonial Causes Act 1973,
 - (ii) the Domicile and Matrimonial Proceedings Act 1973,

- (iii) sections 1, 7 and 63 of, and paragraph 38 of Schedule 2 to, the Domestic Proceedings and Magistrates' Courts Act 1978,
 - (iv) the Senior Courts Act 1981,
 - (v) the Administration of Justice Act 1982,
 - (vi) the Matrimonial and Family Proceedings Act 1984,
 - (vii) the Family Law Act 1986, and
 - (viii) Schedule 13 to the Children Act 1989.
- (3) In consequence of subsections (1) and (2), the following provisions are repealed –
- (a) paragraphs 50 to 52 of Schedule 4 to the Access to Justice Act 1999,
 - (b) the following provisions of the Welfare Reform and Pensions Act 1999 –
 - (i) section 28(1)(b) and (c), (2), (4) and (5),
 - (ii) section 48(1)(b) and (c), (2), (4) and (5), and
 - (iii) in Schedule 12, paragraphs 64 to 66,
 - (c) paragraphs 22 to 25 of Schedule 1 to the Constitutional Reform Act 2005, and
 - (d) paragraph 12 of Schedule 2 to the Children and Adoption Act 2006.
- (4) In consequence of subsection (1), in section 1 of the Family Law Act 1996 (general principles underlying Part 2), in the words before paragraph (a) and in the title, for “Parts II and III” substitute “section 22”.
- (5) In consequence of subsection (3)(b)(i), in section 28(11) of the Welfare Reform and Pensions Act 1999 (interpretation of subsections (4)(b), (5)(c) and (6)) for “subsections (4)(b), (5)(c) and” substitute “subsection”.
- (6) The modifications set out in subsection (7), which were originally made by article 3(2) of the No. 2 Order and article 4 of the No. 3 Order, are to continue to have effect but as amendments of the provisions concerned (rather than as modifications having effect until the coming into force of provisions of the Family Law Act 1996 repealed by this section without having come into force).
- (7) The modifications are –
- (a) in section 22(2) of the Matrimonial and Family Proceedings Act 1984 for the words from “if” to “granted” substitute “if a decree of divorce, a decree of nullity of marriage or a decree of judicial separation has been granted”, and
 - (b) in section 31 of the Matrimonial Causes Act 1973 –
 - (i) in subsection (7D) for “Subsections (7) and (8) of section 22A” substitute “Section 23(6)”,
 - (ii) in subsection (7D) for “section 22A” substitute “section 23”, and
 - (iii) in subsection (7F) for “section 23A” substitute “section 24”.
- (8) In section 31(7D) of the Matrimonial Causes Act 1973 –
- (a) for “apply”, in the first place, substitute “applies”, and
 - (b) for “they apply where it” substitute “it applies where the court”.
- (9) Articles 3(2) and 4 of the No. 2 Order, and article 4 of the No. 3 Order, are revoked; and in subsection (6) and this subsection –
- “the No. 2 Order” means the Family Law Act 1996 (Commencement No. 2) Order 1997 (S.I. 1997/1892), and

“the No. 3 Order” means the Family Law Act 1996 (Commencement No. 3) Order 1998 (S.I. 1998/2572).

9 Commencement and extent

- (1) Sections 1, 3 and 7 come into force on such day as the Lord Chancellor appoints by order made by statutory instrument.
- (2) Sections 2 and 4 to 6 come into force on such day as the Secretary of State appoints by order made by statutory instrument.
- (3) Section 8 comes into force at the end of the period of two months beginning with the day on which this Act is passed.
- (4) An order under subsection (1) or (2) may –
 - (a) appoint different days for different purposes, and
 - (b) contain transitional, transitory or saving provision.
- (5) Sections 1 to 8 extend to England and Wales only, subject to subsection (6).
- (6) An amendment or repeal made by sections 1 to 8 has the same extent as the provision to which it relates (ignoring extent by virtue of an Order in Council).

SCHEDULES

SCHEDULE 1

Section 2

CHILD ARRANGEMENTS ORDERS: AMENDMENTS

- 1 The Children Act 1989 is amended as follows.
- 2 (1) Section 5 (appointment of guardians) is amended as follows.
 - (2) In subsection (1)(b) (application to court for appointment of guardian may be made following death of person with whom child was to live) for “residence order has been made with respect to the child in favour of a parent, guardian or special guardian of his who” substitute “parent, guardian or special guardian of the child’s was named in a child arrangements order as a person with whom the child was to live and”.
 - (3) In subsection (7)(b) (when non-court appointment of guardian under subsection (3) or (4) takes effect) for “residence order in his favour was in force with respect to the child or he” substitute “child arrangements order was in force in which the person was named as a person with whom the child was to live or the person”.
 - (4) In subsection (9) –
 - (a) for “residence” substitute “child arrangements”,
 - (b) for “was also made in favour of” substitute “also named”, and
 - (c) after “child” insert “as a person with whom the child was to live”.
- 3 In the title of section 8 for “Residence, contact” substitute “Child arrangements orders”.
- 4 (1) Section 9 (restrictions on making section 8 orders) is amended as follows.
 - (2) In subsection (1) (no section 8 order other than a residence order to be made if child is in care) for “residence order” substitute “child arrangements order to which subsection (6B) applies”.
 - (3) In subsection (2) (local authorities cannot obtain residence or contact orders) for “residence order or contact” substitute “child arrangements”.
 - (4) In subsection (5)(a) (specific issue order or prohibited steps order not to be made where result could be achieved by a residence or contact order) for “residence or contact” substitute “child arrangements”.
 - (5) In subsection (6) (section 8 orders other than residence orders are only exceptionally to have effect once child is 16) for “specific issue order, contact order or prohibited steps” substitute “section 8”.
 - (6) After subsection (6) insert –

- “(6A) Subsection (6) does not apply to a child arrangements order to which subsection (6B) applies.
- (6B) This subsection applies to a child arrangements order if the arrangements regulated by the order relate only to either or both of the following –
- (a) with whom the child concerned is to live, and
 - (b) when the child is to live with any person.”
- 5 (1) Section 10 (power of court to make section 8 orders) is amended as follows.
- (2) For subsection (4)(b) (person may apply for section 8 order if residence order is in force in favour of the person) substitute –
- “(b) any person who is named, in a child arrangements order that is in force with respect to the child, as a person with whom the child is to live.”
- (3) In subsection (5) (persons entitled to apply for a residence or contact order) –
- (a) in the words before paragraph (a) for “residence or contact” substitute “child arrangements”,
 - (b) for paragraph (c)(i) substitute –
 - “(i) in any case where a child arrangements order in force with respect to the child regulates arrangements relating to with whom the child is to live or when the child is to live with any person, has the consent of each of the persons named in the order as a person with whom the child is to live;”, and
 - (c) after paragraph (c) insert –
 - “(d) any person who has parental responsibility for the child by virtue of provision made under section 12(2A).”
- (4) In each of subsections (5A) and (5B) (foster parent, or relative, may apply for residence order if child has lived with applicant for at least a year) for “residence order” substitute “child arrangements order to which subsection (5C) applies”.
- (5) After subsection (5B) insert –
- “(5C) This subsection applies to a child arrangements order if the arrangements regulated by the order relate only to either or both of the following –
- (a) with whom the child concerned is to live, and
 - (b) when the child is to live with any person.”
- (6) In subsection (6)(b) (person may apply for variation or discharge of a contact order if named in the order) –
- (a) for “contact” substitute “child arrangements”, and
 - (b) for “the order.” substitute “provisions of the order regulating arrangements relating to –
 - (i) with whom the child concerned is to spend time or otherwise have contact, or

- (ii) when the child is to spend time or otherwise have contact with any person.”
- (7) In subsection (7A) (if special guardianship order in force, application for residence order may be made only with leave of the court) for “residence order” substitute “child arrangements order to which subsection (7B) applies”.
- (8) After subsection (7A) insert –
- “(7B) This subsection applies to a child arrangements order if the arrangements regulated by the order consist of, or include, arrangements which relate to either or both of the following –
- (a) with whom the child concerned is to live, and
- (b) when the child is to live with any person.”
- 6 (1) Section 11 (section 8 orders: general principles and supplementary provisions) is amended as follows.
- (2) In subsection (1) (court’s duty, in the light of rules made by virtue of subsection (2), to draw up timetable and give directions to implement it) for “rules made by virtue of subsection (2)” substitute “provision in rules of court that is of the kind mentioned in subsection (2)(a) or (b)”.
- (3) Omit subsection (4) (residence order may make provision about when a child is to live with persons who do not live together).
- (4) In subsection (5) (residence order ceases to have effect where parents resume cohabitation for at least 6 months) –
- (a) in paragraph (a) for “residence” substitute “child arrangements”,
- (b) in paragraph (b) for the words before “two” substitute “the child has”, and
- (c) in the words after paragraph (b) for “residence order” substitute “order, so far as it has the result that there are times when the child lives or is to live with one of the parents,”.
- (5) In subsection (6) (contact order ceases to have effect where parents resume cohabitation for at least 6 months) for the words before “shall cease” substitute “A child arrangements order made with respect to a child, so far as it provides for the child to spend time or otherwise have contact with one of the child’s parents at times when the child is not living with that parent,”.
- (6) In subsection (7)(b) (persons on whom conditions may be imposed by a section 8 order) –
- (a) for sub-paragraph (i) (person in whose favour the order is made) substitute –
- “(i) who is named in the order as a person with whom the child concerned is to live, spend time or otherwise have contact;”, and
- (b) in sub-paragraph (ii) omit “concerned”.
- 7 (1) Section 11A (contact activity directions) is amended as follows.
- (2) In subsection (1) (application of section) –
- (a) for “contact with a child” substitute “one or more of the matters mentioned in subsection (1A)”, and

- (b) in paragraphs (a) and (b) for “contact order with respect to the child” substitute “child arrangements order with respect to the child concerned”.
 - (3) After subsection (1) insert –
 - “(1A) The matters mentioned in this subsection are –
 - (a) with whom a child is to live,
 - (b) when a child is to live with any person,
 - (c) with whom a child is to spend time or otherwise have contact, and
 - (d) when a child is to spend time or otherwise have contact with any person.”
 - (4) In subsection (2) (court may make contact activity direction in connection with contemplated provision about contact) –
 - (a) for “a contact” substitute “an”, and
 - (b) for “that provision about contact” substitute “the provision that the court is considering whether to make”.
 - (5) In subsection (3) (meaning of “contact activity direction”) –
 - (a) for “A contact” substitute “An”, and
 - (b) for “promotes contact with the child concerned.” substitute “would, in the court’s opinion, help to establish, maintain or improve the involvement in the life of the child concerned of –
 - (a) that individual, or
 - (b) another individual who is a party to the proceedings.”
 - (6) In subsection (5) (particular activities that may be required), in paragraph (a)(i) and (ii) and in paragraph (b), for “contact with a child” substitute “involvement in a child’s life”.
 - (7) In subsection (6) (activities which may not be required) for “a contact” substitute “an”.
 - (8) In subsection (7) (court may not make contact activity direction on same occasion as disposing of proceedings as they relate to contact) –
 - (a) in paragraph (a) for “a contact” substitute “an”, and
 - (b) in paragraph (b) for “contact with the child concerned” substitute “the matters mentioned in subsection (1A) in connection with which the activity direction is made”.
 - (9) In subsection (9) (welfare of child is paramount consideration in considering whether to make contact activity direction) for “a contact” substitute “an”.
 - (10) In the title omit “Contact”.
- 8 (1) Section 11B (further provision about contact activity directions) is amended as follows.
- (2) In subsection (1) (court may not make contact activity direction in proceedings unless there is a dispute about contact) –
 - (a) for “a contact” substitute “an”, and
 - (b) after “in any proceedings” insert “in connection with any matter mentioned in section 11A(1A)”, and
 - (c) for “about contact” substitute “about that matter”.

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- (3) In subsection (2) (contact activity direction may not require a child to take part in an activity unless child is a parent of the child in relation to whom court is considering contact) –
- (a) for “a contact” substitute “an”, and
 - (b) for “about contact” substitute “about a matter mentioned in section 11A(1A)”.
- (4) In subsection (3) (no contact activity direction to be made in connection with contact order which is excepted order) –
- (a) for “a contact activity” substitute “an activity”, and
 - (b) for “contact order”, in both places, substitute “child arrangements order”.
- (5) In subsection (4) (excepted orders) for “contact order” substitute “child arrangements order”.
- (6) In subsection (7) (no contact activity direction to be made unless individual concerned is habitually resident in England and Wales) for “a contact” substitute “an”.
- (7) In the title omit “Contact”.
- 9 (1) Section 11C (contact activity conditions) is amended as follows.
- (2) In subsection (1) (section applies if court makes certain orders) for paragraphs (a) and (b) substitute –
- “(a) a child arrangements order containing –
 - (i) provision for a child to live with different persons at different times,
 - (ii) provision regulating arrangements relating to with whom a child is to spend time or otherwise have contact, or
 - (iii) provision regulating arrangements relating to when a child is to spend time or otherwise have contact with any person; or
 - (b) an order varying a child arrangements order so as to add, vary or omit provision of a kind mentioned in paragraph (a)(i), (ii) or (iii).”
- (3) In subsection (2) (court may impose contact activity condition) –
- (a) for “contact order”, in both places, substitute “child arrangements order”,
 - (b) for “(a “contact activity condition”)” substitute “(an “activity condition”)”, and
 - (c) for “promotes contact with the child concerned.” substitute “would, in the court’s opinion, help to establish, maintain or improve the involvement in the life of the child concerned of –
 - (a) that individual, or
 - (b) another individual who is a party to the proceedings.”
- (4) In subsection (3) (persons who may be required to take part in activities) –
- (a) in paragraph (a) –
 - (i) for “contact order” substitute “child arrangements order”, and
 - (ii) for “the person” substitute “a person”, and

- (b) in paragraph (b) for “the person” substitute “a person”.
 - (5) In subsection (5) (particular activities that may be required) for “a contact”, in both places, substitute “an”.
 - (6) In the title omit “Contact”.
- 10 (1) Section 11D (further provision about contact activity conditions) is amended as follows.
- (2) In subsection (1) (contact activity condition may not be imposed on child unless child is a parent of the child concerned) –
 - (a) for “contact order” substitute “child arrangements order”, and
 - (b) for “a contact activity” substitute “an activity”.
 - (3) In subsection (2) (excepted order may not impose contact activity condition) –
 - (a) for “contact order” substitute “child arrangements order”, and
 - (b) for “a contact activity” substitute “an activity”.
 - (4) In subsection (3) (no contact activity condition to be imposed unless individual concerned is habitually resident in England and Wales) –
 - (a) for “contact order” substitute “child arrangements order”, and
 - (b) for “a contact activity” substitute “an activity”.
 - (5) In the title omit “Contact”.
- 11 (1) Section 11E (making of contact activity directions and conditions) is amended as follows.
- (2) In subsection (1) (court to satisfy itself of matters within subsections (2) to (4)) –
 - (a) for “a contact activity”, in both places, substitute “an activity”, and
 - (b) for “contact order” substitute “child arrangements order”.
 - (3) In subsection (8) (meaning of “specified”) for “a contact”, in both places, substitute “an”.
 - (4) In the title omit “Contact”.
- 12 (1) Section 11F (contact activity: financial assistance) is amended as follows.
- (2) For “a contact activity”, in each place, substitute “an activity”.
 - (3) In subsections (2) and (4) (fee-assistance may be given in respect of persons required to take part in activity that promotes contact) for “promotes contact with” substitute “is expected to help to establish, maintain or improve the involvement of that or another individual in the life of”.
 - (4) In the title omit “Contact”.
- 13 (1) Section 11G (contact activity: monitoring) is amended as follows.
- (2) In subsection (1) for “a contact activity”, in each place, substitute “an activity”.
 - (3) In subsections (1) and (2) for “contact order”, in each place, substitute “child arrangements order”.
 - (4) In the title omit “Contact”.

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- 14 (1) Section 11H (monitoring contact) is amended as follows.
- (2) In subsection (1) (section applies if court makes or varies a contact order) for paragraphs (a) and (b) substitute –
- “(a) a child arrangements order containing provision of a kind mentioned in section 11C(1)(a)(i), (ii) or (iii), or
 - (b) an order varying a child arrangements order so as to add, vary or omit provision of any of those kinds.”
- (3) In subsection (2)(a) (court may ask officer to monitor compliance) for “the contact order (or the contact order as varied);” substitute “each provision of any of those kinds that is contained in the child arrangements order (or in the child arrangements order as varied);”.
- (4) In subsection (3) (individuals whose compliance may be monitored) –
- (a) for “contact order”, in both places, substitute “child arrangements order”, and
 - (b) for paragraphs (a) and (b) (including the “or” at the end of paragraph (b)) substitute –
 - “(za) provides for the child concerned to live with different persons at different times and names the individual as one of those persons;
 - (a) imposes requirements on the individual with regard to the child concerned spending time or otherwise having contact with some other person;
 - (b) names the individual as a person with whom the child concerned is to spend time or otherwise have contact; or”.
- (5) In subsection (4) (requests under subsection (2) not to relate to contact activity conditions) –
- (a) for “contact order”, in both places, substitute “child arrangements order”,
 - (b) for “a contact activity” substitute “an activity”, and
 - (c) for “the contact activity” substitute “the activity”.
- (6) In subsection (5) (when court may make request under subsection (2)) –
- (a) in paragraph (a) for “contact order”, in both places, substitute “child arrangements order”, and
 - (b) in paragraph (b) after “the child concerned” insert “or to the child’s living arrangements”.
- (7) In subsection (10) (request not to be made under subsection (2) if contact order is an excepted order) for “contact” substitute “child arrangements”.
- (8) In the title after “contact” insert “and shared residence”.
- 15 In section 11I (warning notices to be attached to contact orders and to orders varying contact orders) –
- (a) for “contact”, in each place, substitute “child arrangements”, and
 - (b) in the title for “Contact” substitute “Child arrangements”.
- 16 (1) Section 11J (enforcement orders where contact order not complied with) is amended as follows.
- (2) In subsection (1) for “contact” substitute “child arrangements”.

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- (3) In subsection (2) for “the contact” substitute “a provision of the child arrangements”.
- (4) In subsection (3) for “contact order” substitute “provision”.
- (5) In subsection (5) –
- (a) for “contact order”, in each place, substitute “child arrangements order”,
 - (b) in paragraphs (a) and (b) for “the person”, in each place, substitute “a person”, and
 - (c) in paragraph (c) for “a contact activity” substitute “an activity”.
- (6) In subsection (6) for “contact” substitute “child arrangements”.
- 17 (1) Section 11K (enforcement orders: further provisions) is amended as follows.
- (2) In subsection (1) (enforcement order not to be made where notice not given under section 11I) –
- (a) in the words before paragraph (a), for “contact order” substitute “provision of a child arrangements order”,
 - (b) in paragraph (a) –
 - (i) for “a contact order that” substitute “a provision of a child arrangements order where the order”, and
 - (ii) for “the contact” substitute “the child arrangements”, and
 - (c) in paragraph (b) for “contact” substitute “child arrangements”.
- (3) In subsection (2) (enforcement order not to be made where person failed to comply with contact order when under 18) for “contact” substitute “provision of a child arrangements”.
- (4) In subsection (3) (enforcement order not to be made where contact order is an excepted order) for “contact order that” substitute “provision of a child arrangements order where the child arrangements order”.
- 18 (1) Section 11L (making of enforcement orders) is amended as follows.
- (2) In subsection (1) (order must be necessary and its likely effect proportionate) –
- (a) for “a contact” substitute “a provision of a child arrangements”,
 - (b) in paragraph (a) for “contact”, in each place, substitute “child arrangements”, and
 - (c) in paragraph (b) omit “of the contact order”.
- (3) In subsection (3) for “contact” substitute “provision of a child arrangements”.
- (4) In subsection (7) for “contact”, in both places, substitute “child arrangements”.
- 19 (1) Section 11O (compensation for financial loss arising from breach of contact order) is amended as follows.
- (2) In subsection (1) for “contact” substitute “child arrangements”.
- (3) In subsection (2)(a) for “the contact” substitute “a provision of the child arrangements”.

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- (4) In subsection (3) for “contact” substitute “particular provision of the child arrangements”.
- (5) In subsection (6) –
- (a) for “contact order”, in each place, substitute “child arrangements order”,
 - (b) in paragraphs (a) and (b) for “the person”, in each place, substitute “a person”, and
 - (c) in paragraph (c) for “a contact activity” substitute “an activity”.
- 20 (1) Section 11P (compensation orders under section 11O(2): further provision) is amended as follows.
- (2) In subsection (1) (compensation not to be ordered where notice not given under section 11I) –
- (a) in the words before paragraph (a), for “contact order” substitute “provision of a child arrangements order”,
 - (b) in paragraph (a) –
 - (i) for “a contact order that” substitute “a provision of a child arrangements order where the order”, and
 - (ii) for “the contact” substitute “the child arrangements”, and
 - (c) in paragraph (b) for “contact” substitute “child arrangements”.
- (3) In subsection (2) (compensation not to be ordered where person failed to comply with contact order when under 18) for “contact” substitute “provision of a child arrangements”.
- (4) In subsection (3) (compensation not to be ordered where contact order is an excepted order) for “contact order that” substitute “provision of a child arrangements order where the child arrangements order”.
- 21 (1) Section 12 (residence orders and parental responsibility) is amended as follows.
- (2) For subsections (1) and (1A) (court making residence order in favour of father without parental responsibility is also to make order giving parental responsibility to the father) substitute –
- “(1) Where –
- (a) the court makes a child arrangements order with respect to a child,
 - (b) the father of the child, or a woman who is a parent of the child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008, is named in the order as a person with whom the child is to live, and
 - (c) the father, or the woman, would not otherwise have parental responsibility for the child,
- the court must also make an order under section 4 giving the father, or under section 4ZA giving the woman, that responsibility.
- (1A) Where –
- (a) the court makes a child arrangements order with respect to a child,
 - (b) the father of the child, or a woman who is a parent of the child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008, is named in the order as a person with

- whom the child is to spend time or otherwise have contact but is not named in the order as a person with whom the child is to live, and
- (c) the father, or the woman, would not otherwise have parental responsibility for the child,
- the court must decide whether it would be appropriate, in view of the provision made in the order with respect to the father or the woman, for him or her to have parental responsibility for the child and, if it decides that it would be appropriate for the father or the woman to have that responsibility, must also make an order under section 4 giving him, or under section 4ZA giving her, that responsibility.”
- (3) In subsection (2) (residence order in favour of person other than parent or guardian) –
- (a) for “residence order in favour of any person who is not the” substitute “child arrangements order and a person who is not a”,
- (b) after “concerned” insert “is named in the order as a person with whom the child is to live,”, and
- (c) for “residence order remains in force” substitute “order remains in force so far as providing for the child to live with that person”.
- (4) After subsection (2) insert –
- “(2A) Where –
- (a) the court makes a child arrangements order, and
- (b) a person who is not the parent or guardian of the child concerned is named in the order as a person with whom the child is to spend time or otherwise have contact but is not named in the order as a person with whom the child is to live,
- the court may provide in the order for the person to have parental responsibility for the child while the order remains in force so far as providing for the child to spend time or otherwise have contact with that person.”
- (5) In subsection (3) (limits on parental responsibility given by subsection (2)) after “subsection (2)” insert “or (2A)”.
- (6) In subsection (4) (where order giving parental responsibility was made in compliance with subsection (1) or (1A), order not to be revoked while residence order remains in force) –
- (a) omit “or (1A)”,
- (b) for “in respect of the” substitute “in respect of a”, and
- (c) for “residence order concerned remains in force” substitute “child arrangements order concerned remains in force so far as providing for the child to live with that parent”.
- (7) In the title for “Residence” substitute “Child arrangements”.
- 22 (1) Section 13 (effect of residence order on change of child’s name or removal from jurisdiction) is amended as follows.
- (2) In subsection (1) (new surname or removal from UK requires consent of all with parental responsibility or leave of court) for “residence order” substitute “child arrangements order to which subsection (4) applies”.

- (3) In subsection (2) (child may be removed from UK for up to 1 month by person in whose favour residence order is made) for “the person in whose favour the residence order is made” substitute “a person named in the child arrangements order as a person with whom the child is to live”.
- (4) In subsection (3) (court’s leave may be given in making a residence order) for “residence order with respect to a child” substitute “child arrangements order to which subsection (4) applies”.
- (5) After subsection (3) insert –
- “(4) This subsection applies to a child arrangements order if the arrangements regulated by the order consist of, or include, arrangements which relate to either or both of the following –
- (a) with whom the child concerned is to live, and
 - (b) when the child is to live with any person.”
- 23 Omit section 14 (enforcement of residence orders in magistrates’ courts).
- 24 In section 14A(5) (persons eligible to apply for special guardianship order), in paragraph (b) for the words after “individual” substitute “who is named in a child arrangements order as a person with whom the child is to live”.
- 25 (1) Section 14B (making of special guardianship orders) is amended as follows.
- (2) In subsection (1) (matters for court to consider before making special guardianship order) –
- (a) in paragraph (a) for “contact order” substitute “child arrangements order containing contact provision”,
 - (b) in paragraph (c) –
 - (i) for “a contact order” substitute “contact provision contained in a child arrangements order”, and
 - (ii) for “that contact order” substitute “that provision”, and
 - (c) for paragraph (d) (whether contact activity direction should be discharged) substitute –

“(d) where an activity direction has been made in proceedings for the making, variation or discharge of a child arrangements order with respect to the child, that direction should be discharged.”
- (3) After subsection (1) insert –
- “(1A) In subsection (1) “contact provision” means provision which regulates arrangements relating to –
- (a) with whom a child is to spend time or otherwise have contact, or
 - (b) when a child is to spend time or otherwise have contact with any person;
- but in paragraphs (a) and (b) a reference to spending time or otherwise having contact with a person is to doing that otherwise than as a result of living with the person.”
- 26 In section 14D(1) (persons eligible to apply for variation or discharge of special guardianship order), in paragraph (c) for the words after “individual” substitute “who is named in a child arrangements order as a person with whom the child is to live”.

- 27 In section 14E(1) (special guardianship orders: court’s duty, in the light of rules made by virtue of subsection (3), to draw up timetable and give directions to implement it) for “rules made by virtue of subsection (3)” substitute “provision in rules of court that is of the kind mentioned in section 11(2)(a) or (b)”.
- 28 (1) Section 16 (family assistance orders) is amended as follows.
- (2) In subsection (2)(b) (persons may be named in order if child lives with them or if contact order in their favour is in force) for the words after “living or” substitute “who is named in a child arrangements order as a person with whom the child is to live, spend time or otherwise have contact”.
- (3) In subsection (4A) (family assistance order may direct officer to give advice and assistance as to contact where contact order in force) for “a contact order” substitute “contact provision contained in a child arrangements order”.
- (4) After subsection (4A) insert –
- “(4B) In subsection (4A) “contact provision” means provision which regulates arrangements relating to –
- (a) with whom a child is to spend time or otherwise have contact, or
- (b) when a child is to spend time or otherwise have contact with any person.”
- 29 For section 20(9)(a) (if accommodation under section 20 provided for child with agreement of person in whose favour a residence order has been made, that agreement overrides objections of a person with parental responsibility) substitute –
- “(a) who is named in a child arrangements order as a person with whom the child is to live;”.
- 30 In section 22C(3)(c) (where residence order in favour of a person was in force before care order was made, local authority may arrange for the child to live with that person) –
- (a) for “a residence order” substitute “a child arrangements order”, and
- (b) for “in whose favour the residence order was made” substitute “named in the child arrangements order as a person with whom the child was to live”.
- 31 In section 23(4) (persons not referred to as local authority foster parents), in paragraph (c) for the words from “a residence order” to the end substitute “a child arrangements order in force with respect to the child immediately before the care order was made, a person named in the child arrangements order as a person with whom the child was to live.”
- 32 In section 34(1)(c) (child in care to be allowed reasonable contact with person in whose favour residence order was in force before care order was made) –
- (a) for “residence” substitute “child arrangements”, and
- (b) for “the person in whose favour the order was made” substitute “any person named in the child arrangements order as a person with whom the child was to live”.
- 33 (1) Section 38 (interim care or supervision orders) is amended as follows.

- (2) In subsection (3) (interim supervision order to be made in certain cases where residence order made in proceedings for a care or supervision order) for “residence order with respect to” substitute “child arrangements order with respect to the living arrangements of”.
- (3) After subsection (3) insert –
- “(3A) For the purposes of subsection (3), a child arrangements order is one made with respect to the living arrangements of the child concerned if the arrangements regulated by the order consist of, or include, arrangements which relate to either or both of the following –
- (a) with whom the child is to live, and
 - (b) when the child is to live with any person.”
- 34 (1) Section 41 (representation of child: meaning of “specified proceedings”) is amended as follows.
- (2) In subsection (6)(e) and (h)(ii) (which refer to the making of a residence order) for “residence order with respect to” substitute “child arrangements order with respect to the living arrangements of”.
- (3) After subsection (6A) insert –
- “(6B) For the purposes of subsection (6), a child arrangements order is one made with respect to the living arrangements of a child if the arrangements regulated by the order consist of, or include, arrangements which relate to either or both of the following –
- (a) with whom the child is to live, and
 - (b) when the child is to live with any person.”
- 35 In section 43(11) (persons to be given notice of application for child assessment order) for paragraph (d) substitute –
- “(d) any person named in a child arrangements order as a person with whom the child is to spend time or otherwise have contact;”.
- 36 In section 44(13) (persons to be allowed reasonable contact with child where emergency protection order made) for paragraph (d) substitute –
- “(d) any person named in a child arrangements order as a person with whom the child is to spend time or otherwise have contact;”.
- 37 In section 46(10) (persons to be allowed reasonable contact with child in police protection where that is in child’s best interests) for paragraph (d) substitute –
- “(d) any person named in a child arrangements order as a person with whom the child is to spend time or otherwise have contact;”.
- 38 (1) Section 91 (effect and duration of orders etc.) is amended as follows.
- (2) In subsection (1) (making of residence order discharges care order) for “residence order with respect to” substitute “child arrangements order with respect to the living arrangements of”.
- (3) After subsection (1) insert –

- “(1A) For the purposes of subsection (1), a child arrangements order is one made with respect to the living arrangements of a child if the arrangements regulated by the order consist of, or include, arrangements which relate to either or both of the following –
- (a) with whom the child is to live, and
 - (b) when the child is to live with any person.”
- (4) In subsection (2A) (making of care order discharges contact activity direction) –
- (a) for “a contact” substitute “an”, and
 - (b) for “as regards contact with” substitute “with respect to”.
- (5) In subsection (10) (section 8 order other than residence order ceases to have effect when child turns 16 unless it is to have effect beyond that age by virtue of section 9(6)) omit “other than a residence order”.
- (6) After subsection (10) insert –
- “(10A) Subsection (10) does not apply to provision in a child arrangements order which regulates arrangements relating to –
- (a) with whom a child is to live, or
 - (b) when a child is to live with any person.”
- 39 (1) Section 105 (interpretation) is amended as follows.
- (2) In subsection (1) (definitions) –
- (a) before the definition of “adoption agency” insert –
 - ““activity condition” has the meaning given by section 11C;
 - “activity direction” has the meaning given by section 11A;”,
 - (b) at the appropriate place insert –
 - “child arrangements order” has the meaning given by section 8(1);”, and
 - (c) omit the definition of “contact activity condition”, the definition of “contact activity direction”, the definition of “contact order” and the definition of “residence order”.
- (3) Omit subsection (3) (interpretation of certain references relating to residence orders).
- 40 (1) Schedule A1 (enforcement orders) is amended as follows.
- (2) In paragraphs 4(1), 5(1), 6(1), 7(1), 8(1) and 9(1) and (11)(a) for “contact” substitute “provision of a child arrangements”.
- (3) In paragraphs 4(2)(c), (4)(b) and (5), 6(3) and 9(6) and (10)(a) for “contact”, in each place, substitute “child arrangements”.
- (4) In paragraph 9(5) for “the contact” substitute “a provision of the child arrangements”.
- (5) In paragraph 9(10)(b) for “contact order and” substitute “provisions of the child arrangements order and with”.
- 41 (1) Schedule 1 (financial provision for children) is amended as follows.

- (2) In paragraph 1 (power of court to make orders on application of parent, guardian, special guardian or person in whose favour residence order in force) –
- (a) in sub-paragraph (1) for the words from “in whose favour” to “to a child” substitute “who is named in a child arrangements order as a person with whom a child is to live”,
 - (b) in sub-paragraph (6) –
 - (i) omit “a residence order or”, and
 - (ii) after “special guardianship order” insert “, or on making, varying or discharging provision in a child arrangements order with respect to the living arrangements of a child,” and
 - (c) after sub-paragraph (6) insert –
 - “(6A) For the purposes of sub-paragraph (6) provision in a child arrangements order is with respect to the living arrangements of a child if it regulates arrangements relating to –
 - (a) with whom the child is to live, or
 - (b) when the child is to live with any person.”
- (3) In paragraph 8 (circumstances in which court may revoke financial relief order under other enactment) –
- (a) in sub-paragraph (1) for “residence order” substitute “child arrangements order to which sub-paragraph (1A) applies”, and
 - (b) after sub-paragraph (1) insert –
 - “(1A) This sub-paragraph applies to a child arrangements order if the arrangements regulated by the order consist of, or include, arrangements which relate to either or both of the following –
 - (a) with whom the child concerned is to live, and
 - (b) when the child is to live with any person.”, and
 - (c) in sub-paragraph (2)(b) –
 - (i) after “any person” insert “who is named in a child arrangements order as a person with whom the child is to live or”, and
 - (ii) omit “a residence order or”.
- (4) In paragraph 15 (local authority may contribute to maintenance of child living with person as a result of residence order) for “residence order” substitute “child arrangements order”.
- 42 In Schedule 14, omit paragraph 10 (certain orders made under legislation repealed by the Children Act 1989 to be enforceable under section 14 of that Act).

PROVISIONS ABOUT FAMILY JUSTICE

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the provisions about family justice as published for Pre-Legislative Scrutiny on 3 September 2012. They have been prepared by the Department for Education and the Ministry of Justice. Their purpose is to assist the reader in understanding these provisions. They do not form part of the provisions.
2. The Department for Education and the Ministry of Justice are planning for these changes to form part of a larger package of children and families legislation in the near future. These explanatory notes are therefore only concerned with the provisions about family justice.
3. The notes need to be read in conjunction with the provisions. They are not, and are not meant to be, a comprehensive description of the provisions. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND AND SUMMARY

Background

4. The provisions would introduce changes to the operation of the family justice system, as recommended by the Family Justice Review and accepted by the Government in its response published in February 2012. Some of the changes involve amendments of primary legislation.
5. The legal framework for the courts when deciding matters relating to the upbringing of children has remained largely unchanged since the introduction of the Children Act 1989. Similarly, since the introduction of the special procedure for divorce there have not been major changes to the divorce process (the process relating to dissolution of civil partnerships mirrors the divorce process). The law of divorce is contained in the Matrimonial Causes Act 1973 (provisions of which were mirrored in the Civil Partnership Act 2004).
6. The Family Justice Review, chaired by David Norgrove, was set up by the Government in 2010 to look at the family justice system and provide recommendations as to how the system could be changed for the benefit of children and families. An Interim Report was published in March 2011 and the Family Justice

These notes refer to the provisions about Family Justice

Review Final Report was published in November 2011. The Final and Interim Reports of the Family Justice Review can be found at www.education.gov.uk.

7. The Government's response to the Review was published on 6 February 2012 and set out the areas on which legislation would be introduced.

Summary

Private law

8. The changes made by the provisions are intended to promote the resolution of disputes away from court wherever possible, to ensure that decisions made by the family courts about the arrangements for children following parental divorce or separation reflect the benefit to the child of maintaining the ongoing involvement of both parents in a child's life, and to streamline the court process for divorce or dissolution of a civil partnership. The main changes introduced by the provisions are:

- new provision so that prior to making an application for a court order in family proceedings of a description specified in Family Procedure Rules, the person who proposes to make the application must first attend a meeting to receive information about mediation and other means of resolving a dispute without going to court. Such a meeting is referred to in the provisions as a 'family mediation information and assessment meeting'. The types of proceedings that might be specified in Family Procedure Rules might include, for example, proceedings relating to arrangements for a child or to a financial remedy following separation or divorce.
- the replacement of the 'residence order' and the 'contact order' as set out in section 8 of the Children Act 1989 by a new form of order – a child arrangements order – which can deal with the arrangements concerning who a child should live with, who the child should spend time with and who the child should have other types of contact with. There will also be consequential and other related amendments.
- the repeal of section 41 of the Matrimonial Causes Act 1973 and section 63 of the Civil Partnership Act 2004 to remove the requirement that the court should consider, in any proceedings for divorce (or dissolution in the case of a civil partnership), nullity or judicial separation where there are children of the family, whether it should exercise any of its powers under the Children Act 1989. Any dispute about the arrangements for a child resulting from divorce, dissolution etc. will in future be dealt with by way of free-standing application to the court under the Children Act 1989.
- the repeal of uncommenced provisions of Part 2 of the Family Law Act 1996 which include amended grounds for divorce and provisions to encourage people to consider the use of family mediation to resolve disputes about arrangements for their children or for finance.

Public law

9. The changes made by the provisions are intended to ensure the more timely progression of care and supervision proceedings in the interests of children. The intention is to do this by providing a clear focus on the timetable for such proceedings, by ensuring that additional evidence is only requested where it is necessary to conclude the proceedings justly and by streamlining processes. The key elements are:

- putting in place a maximum 26 week time limit for the completion of care and supervision proceedings, with the possibility of extending the time limit in a particular case for up to eight weeks at a time should that be necessary to resolve proceedings justly.
- ensuring that decisions regarding the timetable for the case are child focused and made with explicit reference to the child's welfare.
- removing the eight week time limit on the duration of initial interim care orders (ICOs) and interim supervision orders (ISOs), and the four week time limit on subsequent orders, and allowing the court to make interim orders for the length of time it sees fit, although not extending beyond the date when the relevant care or supervision order proceedings are disposed of.
- requiring the court to focus, when considering the care plan, on those issues which are essential to the court's decision as to whether an order should be made, namely the provisions of the care plan that set out the long term plan for the upbringing of the child.
- ensuring that expert evidence in family proceedings concerning children is permitted only when necessary to resolve the case justly, taking account of factors including the impact on the welfare of the child, and whether the information could be obtained from one of the parties already involved in the proceedings.

IMPACT ASSESSMENTS

10. Impact assessments have been completed in respect of each of the provisions outlined above except for the repeal of provisions in Part 2 of the Family Law Act 1996. As the relevant provisions of Part 2 have never been commenced the repeal of them has no impact.

TERRITORIAL EXTENT AND APPLICATION

11. Amendments and repeals of legislation have the same extent as the legislation amended or repealed. Otherwise, the provisions extend to England and Wales only.

COMMENCEMENT

12. Clauses 1, 3 and 7 will be brought into force by commencement order made by the Lord Chancellor. Clauses 2 and 4 to 6 (and the Schedule) will be brought into force by commencement order made by the Secretary of State. Clause 8 is to come into force at the end of the period of two months after Royal Assent.

COMMENTARY ON CLAUSES

Requirement to attend family mediation information and assessment meeting

Clause 1: Family mediation information and assessment meetings

13. There is widespread acknowledgement that an adversarial court process is not always best-suited to the resolution of family disputes, particularly disputes between parents relating to children. Such disputes are often best resolved through discussion and agreement, where that can be managed safely and appropriately.

14. Evidence given to the Family Justice Review suggests that awareness and understanding of forms of alternative dispute resolution - including mediation - is low, despite the existence of a pre-application protocol requiring consideration of mediation prior to the issuing of proceedings. It was also noted that many litigants with hindsight wish they had tried or persevered with mediation rather than the court process.¹ This suggests there is value in taking further steps to ensure all those involved in private family disputes who are potentially suitable for mediation receive information about it before they decide whether to begin court proceedings.

15. The Government therefore wishes to legislate to provide that, in future, every person who wishes to apply for a court order in family proceedings of a certain type – whether publicly or privately funded - must first attend a family mediation information and assessment meeting (a “MIAM”) to find out about and consider mediation, or other forms of non-court based dispute resolution, unless that person meets limited criteria exempting them from this requirement. The proposals will put privately funded persons in the same position as recipients of Legal Aid have been in since 1997, in terms of having to attend a MIAM unless specific exemptions apply.

16. *Subsection (1)* imposes on a person who wishes to make a relevant family application a requirement to first attend a MIAM. Subsection (4) provides that a “relevant family application” is a family application of a description specified in Family Procedure Rules. It is intended that the Family Procedure Rules should make provision so that, for example, the requirement to attend a MIAM will apply (unless an exemption applies) in relation to an application for a child arrangements order.

¹ Family Justice Review, Interim Report, available at www.justice.gov.uk

These notes refer to the provisions about Family Justice

17. The requirement in subsection (1) should mean that a prospective applicant receives and is able to consider information about family mediation as a means of resolving the dispute as an alternative to seeking a court order.

18. *Subsection (2)* enables provision to be made in Family Procedure Rules for how the requirement in subsection (1) is to work in practice. This may include provision:

- setting out circumstances in which the requirement to attend a MIAM before making an application to court will not apply (subsection (2)(a)).
- about how attendance at a MIAM is arranged and how a MIAM is to be conducted (subsection (2)(b)).
- about the process by which the court or an officer of the court is to determine whether the requirement to attend a MIAM applies and, if so, whether it has been complied with (subsection (2)(c)) and
- for the court or an officer of the court to refuse to deal with an application if the requirement to attend a MIAM should have, but has not, been complied with (subsection (2)(d)).

19. Article 6 of the European Convention on Human Rights (which provides amongst other things, that in the determination of a person's civil rights and obligations, the person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal) means that the Government will need to ensure that Family Procedure Rules are made disapplying the requirement to attend a MIAM where that requirement would impair the very essence of the right of access to a court. For example, the intention is that in cases which are urgent (as to be defined) or where a MIAM cannot be arranged within a specified time, or where there is evidence of domestic violence, the requirement to attend will not apply.

20. *Subsection (3)* provides that Family Procedure Rules may, in particular, make provision for the court or court officer to determine on the basis only of evidence of a description specified in those rules whether subsection (1) applies to the type of application in question and, if so, whether subsection (1) has been complied with. The intention is that the Family Procedure Rules should provide that such determinations should be made on the basis only of the evidence contained in a standard court form.

21. *Subsection (4)* defines various terms used in subsections (1) to (3).

22. *Subsection (5)* makes it clear that the powers in the clause to make provision in Family Procedure Rules have no limiting effect on sections 75 and 76 of the Court Act 2003 (which provide the general power to make Family Procedure Rules i.e. rules regulating practice and procedure in family proceedings).

Child Arrangements Order

Clause 2: Child arrangements orders

23. *Subsection (2)* removes the current definitions in section 8(1) of the Children Act 1989 of a residence order (an order as to the person with whom the child should live) and of a contact order (an order requiring the person with whom the child lives to allow the child to have contact with the person named in the order). These orders are to be replaced by the child arrangements order, in line with the recommendation made by the Family Justice Review.

24. Entitlement to apply for a child arrangements order will in general mirror the existing entitlement in respect of section 8 orders. But there is one extension of that entitlement. New section 12(2A) of the Children Act 1989 (see paragraph 21(4) of the Schedule) would allow a court to give parental responsibility to a non-parent/guardian who is named in a child arrangements order as a person with whom a child is to spend time or otherwise have contact, but not as a person with whom the child is to live. New paragraph (d) of section 10(5) of that Act (see paragraph 5(3)(c) of the Schedule) would provide that a person who has parental responsibility by virtue of provision under new section 12(2A) is entitled to apply for a child arrangements order. The Government considers that the extension of entitlement that would be effected by new section 10(5)(d) is narrow because there are likely to be only a few cases in which the court considers it appropriate to give parental responsibility to a person with whom a child spends time or otherwise has contact but does not live.

25. *Subsection (3)* inserts into section 8(1) of the Children Act 1989 the definition of the new child arrangements order. A child arrangements order is an order regulating arrangements relating to with whom a child should live, spend time, or have other types of contact, or when a child should live, spend time or have other contact with a person. The other types of contact the child arrangements order may provide for could include indirect contact such as a telephone call by the parent. As now, specific matters which arise in connection with the exercise of parental responsibility for a child (including matters giving rise to a need to limit the exercise of that parental responsibility), and that do not relate to who the child should live with or have contact with, will be dealt with by means of a specific issue order or a prohibited steps order (as defined in section 8(1) of the Children Act 1989) as appropriate.

26. *Subsection (4)* introduces Schedule 1 which makes the necessary consequential and other related amendments.

Schedule 1: Child arrangements order: amendments to the Children Act 1989

27. Schedule 1 contains amendments to the Children Act 1989 that relate to clause 2 (child arrangements order) and the replacement of the “residence order” and the “contact order” by the child arrangements order. Many of these amendments are those which replace “residence order” or “contact order” with “child arrangements order” For those sections which previously referred to either residence orders (for

These notes refer to the provisions about Family Justice

example section 5(1)(b)) or contact orders (for example section 10(6)), the distinction remains, however the language now reflects that the order in question will be a child arrangements order which regulates arrangements relating to with whom the child concerned is to live and when, or relating to with whom the child is to spend time or otherwise have contact, and when. The language used in the amendments also reflects the intention to move away from the concept of an order of this kind being made “in favour of” a particular person.

28. Several amendments have the aim of replicating, in so far as possible, the current position as regards residence orders and contact orders. For an example of this see *paragraphs 6(4) and 6(5)* which amend sections 11(5) and 11(6) respectively.

29. To ensure that the amendments reflect the policy aim of moving away from terminology that implies that there is a winner or loser in disputes concerning children (the perception often being that the parent with residence is the winner while the parent with contact is the loser), some amendments have required additional provisions to be inserted into sections or an alteration to the focus of such sections. In this regard, of particular note are the amendments made by *paragraphs 7 to 11* which amend sections 11A to 11E.

30. Sections 11A to 11E relate to “contact activity directions”, which are directions which the court is able to make where it is considering making provision about contact, and “contact activity conditions”, which can be imposed in a contact order. Contact activity directions and contact activity conditions have the aim of promoting contact. The contact that is being promoted is the child’s contact with the person in respect of whom, in the case of a contact activity direction, the court is considering whether to make provision, and in the case of a contact activity condition, the person who has contact with the child as provided for in the contact order. The amendments to sections 11A to 11E will mean that the activities directed or imposed will be able to relate to more than just promoting the contact provided for in the child arrangements order (or provision about contact which the court is considering). Instead the activities directed or imposed will be about helping to establish, maintain or improve the involvement of a person in a child’s life. As such, these directions and conditions will no longer be referred to as “contact activity directions” or “contact activity conditions”, but will be “activity directions” and “activity conditions”.

31. The shift in focus here is to recognise that where the child lives with more than one person or lives with one person and spends time or otherwise has contact with another person, there may be issues that relate to the time spent by the child with the person with whom he or she lives, that affect the smooth operation of the arrangements for the care of the child. In such circumstances, these issues could be addressed by an activity direction or condition. The court will still be limited by section 11B(1) which will mean that an activity direction cannot be made where there is no dispute about the provision that the court is considering making.

These notes refer to the provisions about Family Justice

32. Sections 11F and 11G are supplementary to sections 11A to 11E and the approach taken in relation to these sections reflects the approach taken to the amendments to sections 11A to 11E. Sections 11H to 11P make supplementary provision relating to contact orders, in particular, provision as to the enforcement of contact orders and the payment of compensation where one person is in breach of an order and the other person suffers financial loss. Amendments made to these sections are to ensure that where a child arrangements order is in force with respect to a child and the provisions setting out the living arrangements (not just arrangements about contact) are sufficiently precise so that it is clear when a person is in breach of the order, the sanctions currently available to the court by virtue of sections 11H to 11P are available in relation to breaches of a child arrangements order by any person who the child is to live with.

33. *Paragraph 21* amends section 12 and relates to the entitlement to parental responsibility as a result of being named in a child arrangements order. In making a child arrangements order, substituted subsection 12(1) *requires* the court to give parental responsibility to the father of the child concerned, or to the child's second female parent (by virtue of section 43 of the Human Fertilisation and Embryology Act 2008), in cases where the father (or second female parent) is named in the order as a person with whom the child is to live. This only applies in cases where the father (or second female parent) would not otherwise have parental responsibility. In cases where a court gives parental responsibility in these circumstances, it will do so by means of an order under section 4 (or 4ZA).

34. New subsection 12(1A) gives the court the power to give parental responsibility to the child's father or second female parent (by virtue of section 43 of the Human Fertilisation and Embryology Act 2008) in cases where the father (or second female parent) is named in the order as a person with whom the child is to spend time or otherwise have contact. It is for the court to determine whether it is appropriate for the child's father or second female parent to be given parental responsibility in the light of the specific provisions of the order and if the court considers it appropriate it must give parental responsibility to the child's father or second female parent. As for subsection 12(1), this only applies in cases where the father (or second female parent) would not otherwise have parental responsibility. In cases where a court does give parental responsibility under this subsection, it will do so by means of an order under section 4 (or 4ZA).

35. The effect of subsection 12(2) as amended is that where a child arrangements order makes provision for a child to live with a person who is not his or her parent or guardian, that person will be given parental responsibility for the duration of the relevant provision.

36. New subsection 12(2A) enables the court to give parental responsibility to a person who is not a child's parent or guardian, in cases where a child arrangements order provides for the child concerned to spend time with or otherwise have contact (but not live) with that person. As for subsection 12(2), parental responsibility is

limited to the duration of the relevant provision. It is envisaged that the circumstances in which the court would exercise this power would be rare.

37. Section 14, which relates to measures for the enforcement of residence orders under section 63(3) of the Magistrates' Courts Act 1980, is repealed by *paragraph 14*. No equivalent is needed because the enforcement powers of the family court to be established by the Crime and Courts Bill will be sufficient.

The use of experts

Clause 3: Expert evidence in children proceedings

38. Clause 3 makes provision about when expert evidence may be sought or put before the court in children proceedings. It is intended that these measures would replace similar provisions in the Family Procedure Rules relating to the court's control on the use of expert evidence.

39. *Subsection (1)* requires that any person wishing to instruct an expert to provide evidence for use in children proceedings must first seek the permission of the court to do so; *subsection (3)* similarly requires the court's permission for a child to be examined or assessed by an expert for the purpose of preparing expert evidence for the court; and *subsection (5)* likewise requires the court's permission for expert evidence, whether in the form of a written report or oral evidence, to be put before the court. Similar restrictions are set out in Part 12 and Part 25 of the Family Procedure Rules.

40. *Subsections (2)* and *(4)* provide for what is to happen where an expert is instructed or a child medically or psychiatrically examined or otherwise assessed to provide expert evidence for use in children proceedings without first obtaining the court's permission. In these circumstances evidence resulting from the instructions or examination or assessment is inadmissible in children proceedings unless the court rules that it is admissible.

41. *Subsection (6)* sets out the test for permission. The court will only be able to give permission as mentioned in subsections (1), (3) and (5) if it is satisfied that the expert evidence is necessary to assist the court in resolving the proceedings justly. In reaching that decision, the court has to consider the factors specified in *subsection (7)*, and any additional factors which may be prescribed by way of Family Procedure Rules. The factors have the effect, among other things, that the court will need to consider how the child might be affected if it is likely that the instruction of an expert would lengthen the timetable for the proceedings.

42. *Subsection (8)* excludes certain types of evidence from the ambit of expert evidence so they are not subject to the restrictions set out in the clause. These include any evidence given by a person who is a member of staff of a local authority or of an authorised applicant the purpose being to ensure, for example, that local authority social workers are not captured within the definition of expert evidence and

These notes refer to the provisions about Family Justice

permission is not required before they can provide a report or give evidence. Similarly, evidence given by officers of Cafcass or Cafcass Cymru, and any evidence provided in connection with determining the suitability of a child for adoption, is not expert evidence and will not be subject to these restrictions.

43. *Subsection (9)* enables “children proceedings” to be defined in the Family Procedure Rules for the purposes of the clause.

44. *Subsection (10)* is intended to ensure that any other matter relating to experts in children proceedings can continue to be determined by the Family Procedure Rules.

45. *Subsection (11)* amends section 38 of the Children Act 1989, which enables the court to give such directions as it considers appropriate relating to the medical or psychiatric examination or other assessment of the child when making an interim care order or an interim supervision order (section 38(6)). The new subsections (7A) and (7B) align section 38 with the new test for permission for expert evidence in children proceedings (as provided for in the previous provisions of clause 3) so that the court may only make a direction for such an examination or assessment to be undertaken if it is satisfied that it is necessary to assist the court to resolve the proceedings justly (new subsection 7A). In reaching a decision, the court must consider a number of factors mirroring those in clause 3(7) (new subsection (7B)).

Care and Supervision proceedings

Clause 4: Time limits in proceedings for care or supervision orders

Time limits for resolution of proceedings

46. The Family Justice Review identified that delay in care and supervision order proceedings was a significant problem. It concluded that delay was endemic in the system, and built up at every stage with cases taking an average of 56 weeks to complete. Delay can harm a child’s chances of finding a permanent home, can damage a child’s development, may put a child at risk of harm, and can cause distress and anxiety to the child. The provision imposing a time limit in care and supervision proceedings has been introduced to reduce unnecessary delay in such proceedings and to ensure that cases are progressed swiftly and are more actively managed with children’s welfare and timescales taking priority.

47. *Subsection (2)* amends section 32(1) of the Children Act 1989, which relates to the timetabling of proceedings on an application for a care or a supervision order, to require the court to timetable care and supervision cases with a view to concluding them without delay and, in any event, within 26 weeks of an application being issued.

48. *Subsection (3)* inserts a series of new subsections into section 32. New subsections (3) and (4) require that particular regard is had by the court to the impact of the timetable on the welfare of the child when drawing up the timetable for a case,

These notes refer to the provisions about Family Justice

revising that timetable, or making any decision (excluding an extension under new subsection (5), dealt with below) which may give rise to a revision of the timetable.

49. These measures build on the provisions already set out in Practice Direction 12A, which contains the Public Law Outline (PLO) (available at www.justice.gsi.gov.uk). This states that cases should be managed in accordance with the child's needs and timescales. The PLO will be updated as part of this work to fit in with the revised section 32 of the Children Act 1989, along with the relevant practice directions, court rules and local authority statutory guidance.

50. New subsection (5) of section 32 allows the court to extend the timetable to be observed when timetabling an application beyond the 26 week time limit or beyond the end of any previous extension only if the court considers that an extension (or further extension) is necessary to enable it to resolve the proceedings justly. The starting point for the court when timetabling cases should always be that the proceedings should be disposed of without delay, and in any event within 26 weeks. New subsection (6) of section 32 highlights that the granting of any extension should be seen as exceptional, rather than routine or commonplace. Further, any extension would require specific justification.

51. The factors which may be relevant when the court is considering whether to extend time beyond 26 weeks or beyond the end of a previous extension may include, for example, the disability or other impairment of a person involved in the proceedings, if that means that their involvement in the case requires more time than it otherwise would, or external factors beyond the court's control, such as parallel criminal proceedings.

52. New subsection (7) of section 32 provides that each separate extension of time made under subsection (5) is to last no more than 8 weeks (even where an extension is granted after the expiry of the period being extended).

53. New subsection (8) of section 32 gives the Lord Chancellor power by making regulations to vary the 26 week time limit or the eight week time limit for extensions. Such regulations would be subject to the affirmative procedure by virtue of amendments contained in clause 6(1).

54. New subsection (9) of section 32 provides for rules of court (Family Procedure Rules) to be able to make certain provision relating to the matters to which the court should have regard when deciding whether to extend the time limit to be observed when timetabling for disposal of an application.

Time limits relating to interim care orders and interim supervision orders

55. An interim care order (ICO) places a child in the care of the local authority on an interim basis until the court can make a final decision. An interim supervision order (ISO) places the local authority under a duty to advise, assist and befriend the

These notes refer to the provisions about Family Justice

child named in the order and to take such steps as are reasonable to give effect to the order. Again this is on an interim basis.

56. The Family Justice Review found that the process of renewing ICOs and ISOs is a largely administrative process which adds little value and they therefore proposed that it should be removed.

57. *Subsection (5)(a)* of clause 4 therefore removes the limits on the duration of ICOs and ISOs set out in section 38 of the Children Act 1989 (eight weeks for initial orders and four weeks for any subsequent orders). Instead the judge will be able to set the length of ICOs and ISOs for a period which is considered appropriate in the particular circumstances of the case, although no ICO or ISO can endure beyond the cessation of the proceedings themselves. Should an ICO or an ISO expire before the proceedings have been resolved, the court will be able to make a further order.

58. It is expected that when making an ICO or ISO it will usually be appropriate to align the duration of the ICO or ISO with the timetable for the proceedings (including any extensions that may have been granted), to avoid the need for the court to make multiple ICOs or ISOs within proceedings.

Clause 5: Court consideration of the Local Authority Care Plan

59. The Family Justice Review found that the courts have progressively extended their interest in the proposed care plan for the child prepared by the local authority in accordance with section 31A of the Children Act 1989, beyond what is needed to be satisfied that a care order is required and in the best interests of the child. The Review proposed that rather than scrutinising the full detail of the care plan prepared by the local authority, the court should consider only the core components of the plan.

60. Clause 5 amends section 31 of the Children Act 1989 so as to focus the court's consideration, when making its decision as to whether to make a care or supervision order, on the provisions of the care plan that set out the long-term plan for the upbringing of the child. Specifically, the court is to consider whether the local authority care plan is for the child to live with a parent or any member of or friend of the child's family, or whether the child is to be adopted or placed in other long term care. These are referred to as the "permanence provisions" of the section 31A plan. The court is not required to consider the remainder of the section 31A plan. New subsection (3C) provides that the Secretary of State may by regulations amend what is meant by the "permanence provisions".

Clause 6: Regulations: procedural requirements

61. Clause 6 provides that regulations made under either section 31(3C) (regulations about permanence provisions) or 32(8) (regulations amending time limits for disposal of care or supervision proceedings) are to be subject to an affirmative resolution procedure.

Divorce and Civil Partnership Dissolution

Clause 7: Repeal of section 41 of the Matrimonial Causes Act 1973

62. Clause 7 repeals section 41 of the Matrimonial Causes Act 1973 and section 63 of the Civil Partnership Act 2004 which require the court to consider whether it should exercise any of its powers under the Children Act 1989 in proceedings for a decree of divorce, nullity of marriage, or judicial separation or, in relation to a civil partnership, for a dissolution, nullity or separation order. These sections apply where there are children under the age of 16 or where there are children who have reached the age of 16 to whom the court directs that the provisions should apply.

63. Removing these requirements will help to facilitate the implementation of the Government's wider policy of expediting and simplifying the procedure for uncontested divorces. The simplified procedure that the Government intends to introduce will be along the following lines. Where a person seeks a divorce they should go first to an online information hub, where they will be able to access an online divorce portal. The application for divorce will be completed online and then be submitted to a processing centre. Where the other spouse does not contest that the marriage has irretrievably broken down, the intention is that a legal adviser of the Family Court will consider the papers and decide whether to make the decree nisi. Court administrators will largely deal with other aspects of the process.

64. Where the other spouse contests that the marriage has irretrievably broken down, the processing officer will transfer the application to the judge for judicial consideration. The judge will then examine the case and determine whether the decree nisi should be issued.

65. The aim of the proposal is to save judges' time in looking at uncontested divorce cases. Currently the district judge in the county court will look at the divorce papers and any arrangements for children before issuing a decree nisi. A member of the court staff deals with applications to make the decree nisi absolute.

66. The intention is that the new proposal will also apply to uncontested judicial separation applications and, in relation to civil partnership, to uncontested applications for a dissolution order or a separation order. The process relating to nullity is to remain unchanged save that section 41 of the 1973 Act and section 63 of the 2004 Act will be repealed. Where there are disputes over children or financial issues it is intended that parties should make an application under the relevant section of the Children Act 1989 or the Matrimonial Causes Act 1973. Arrangements for children will no longer be scrutinised as part of the divorce process. As these arrangements are agreed in the vast majority of cases at the point of divorce it is appropriate for any subsequent substantive disputes which arise to be taken forward in separate proceedings.

67. The Government intends to use the powers to delegate functions of the Family Court, or of a judge of that court, in the new section 31O(4) of the

These notes refer to the provisions about Family Justice

Matrimonial and Family Proceedings Act 1984 (contained in Schedule 10, Part 1, paragraph 1 to the Crime and Courts Bill and introduced by clause 17(6) of that Bill) to delegate the consideration of uncontested divorce and judicial separation and dissolution and separation proceedings to legal advisers of the family court, subject to a power to refer appropriate cases to a judge .

68. *Subsection (1)* repeals the relevant sections of the 1973 and 2004 Acts and *subsections (2) to (8)* make consequential amendments and repeals in respect of provisions in the Matrimonial Causes Act 1973, the Matrimonial and Family Proceedings Act 1984, the Children Act 1989 and the Civil Partnership Act 2004.

Clause 8: Repeal of uncommenced provisions of Part 2 of the Family Law Act 1996

69. Clause 8 repeals uncommenced provisions of Part 2 of the Family Law Act 1996. The Family Law Act 1996 received Royal Assent on 4 July 1996. Part 2 of the 1996 Act introduced revised divorce procedures and encouraged people to consider using mediation to resolve disputes arising on divorce. The provisions were aimed at reducing the bitterness of divorce and the damaging impact on all involved in divorce.

70. In January 2001 the then Lord Chancellor announced that the Government believed it would not be right to proceed with the implementation of Part 2 and that the Government would seek to repeal Part 2 when an appropriate legislative opportunity arose. Evaluation of the information meetings provisions - which were intended as the first stage of the new divorce procedures - indicated that Part 2 would not fulfil the principles behind the Act, to which the Government remains committed, of saving saveable marriages and, where marriages break down, bringing them to an end with the minimum distress to the parties and children affected, and encouraging people to use family mediation to resolve disputes.

71. *Subsection (1)* repeals the uncommenced divorce provisions contained in Part 2 of the Family Law Act 1996. Section 22 (funding of marriage support services) is in force and is not being repealed.

72. *Subsection (2)* repeals various provisions of the Family Law Act 1996 which relate to the provisions of Part 2, including the general principle in section 1(c) relating to bringing marriage to an end with minimum distress to the parties and to encouraging family mediation. A range of non-statutory initiatives pre-court and at court have been introduced to promote and encourage consideration and use of mediation and these are aimed at all separating parents, whether or not the parents are married.

73. *Subsection (3)* makes consequential repeals of other legislation.

74. *Subsections (4) and (5)* make consequential amendments.

These notes refer to the provisions about Family Justice

75. *Subsections (6) and (7)* turn modifications to statutory provisions, which were contained in commencement orders, and which were to have effect until such time as provisions of Part 2 of the Family Law Act 1996 came into force, into permanent amendments to the modified provisions. For example, certain modifications to section 22(2) of the Matrimonial and Family Law Proceedings Act 1984 made by a commencement order are to be made permanent.

76. *Subsection (8)* makes minor amendments of section 31(7D) of the Matrimonial Causes Act 1973 which is one of the provisions modifications of which are made permanent by subsection (7).

77. *Subsection (9)* defines the commencement orders referred to in this section and revokes the provisions of these orders which contain the modifications to statutes which are being turned into permanent amendments by subsections (6) and (7) or which are no longer needed.



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