

CHILDREN, SCHOOLS AND FAMILIES ACT 2010

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Children, Schools and Families Act which received Royal Assent on 8 April 2010. They have been prepared by the Department for Children, Schools and Families in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND AND SUMMARY

3. The Act contains provisions on a range of policies which span the responsibilities of the Department for Children, Schools and Families.
4. The Act contains provisions to give effect to aspects of the White Paper *Your Child, Your School, Our future: building a 21st Century Schools system* (Cmd 7588), to make changes to the way schools operate together.
5. The Act also contains provision following the White Paper *Back on Track: A strategy for modernising alternative provision for young people* (published 20 May 2008).
6. The Act makes provision permitting the media greater access in Family Court proceedings, and increasing the ability of the media to publish reports of those proceedings, and information released during hearings. On 16 December 2008 the Secretary of State for Justice laid the report *Family Justice in View* before Parliament. In his accompanying statement to the House he set out his intention to provide greater transparency of family courts.
7. Further background is included on these and the other elements of the Act in the “Overall Structure of the Act” section.
8. A glossary of terms and abbreviations used in these Explanatory Notes is included at the end of these Notes.

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OVERALL STRUCTURE OF THE ACT

9. The Act consists of 3 Parts and 4 Schedules. The Act is arranged as follows:

Part 1: Children and Schools

10. This Part provides for a number of measures relating to children and schools.
11. It requires school inspections by Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") to take into account the needs of pupils who have a disability or special educational needs (SEN). It provides for an additional right for parents of children with SEN to appeal to the Tribunal when a local authority decides not to alter a child's statement following a review under section 328(5)(b) of the Education Act 1996 ("the EA 1996").
12. It makes changes to existing legislation on exceptional provision for those children who are not being educated in a school, or at home.
13. The Part makes changes to the powers of governing bodies of maintained schools in England to allow them to use their delegated budget to spend money on wider community purposes, and to allow designated governing bodies to be involved in the establishment of new maintained schools and Academies.
14. The Part confers power on Local Safeguarding Children Boards ("LSCBs") in England and Wales to require the supply of information for the purpose of their functions. It makes provision for the Chief Inspector to review the operation of LSCBs in England.

Part 2: Family Proceedings

15. The provisions in this Part will enable wider reporting of family proceedings, within a scheme which is consistent for all levels of court rather than differing according to the court hearing the proceedings as at present.
16. The rules of court governing most family proceedings were amended in April 2009 to allow for the attendance of accredited media representatives, without allowing for attendance by the public more generally. The existing statutory reporting restrictions remained unchanged, however, with the effect that the media are able to report only limited information about the proceedings they attend and are unable to report the substance of those proceedings without the express permission of the court.
17. These sections introduce new arrangements for the publication of information from family proceedings other than those governed by the Judicial Proceedings (Regulation of Reports) Act 1926 (which deals with reporting of divorce and related proceedings). The new arrangements provide for a general restriction on publication by any person of information relating to the proceedings covered, subject to three major exceptions for types of authorised publication: authorised publication of a court order or judgment, "authorised news publication" and authorisation by way of provision made

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in rules of court. Of the three exceptions, publication of court orders and judgments will be possible in much the same way as at present, and it is anticipated that the rules of court will continue to permit similar sorts of disclosure of information as at present; but the “authorised news publication” exception is new and will allow for wider reporting of family proceedings than at present. In addition to these three exceptions, the court will also retain a general discretion to permit the publication of information relating to family proceedings.

18. The exception for authorised news publication of proceedings is for reporting of information acquired by an accredited media representative who has attended the proceedings in question. The news reporting scheme turns on automatic prohibition on reporting of certain sorts of information which is particularly sensitive, with other information being reportable unless the court specifically imposes restrictions. Thus—
 - a) publication of any information likely to lead to the identification of children, parties or witnesses (save professional witnesses) in the proceedings (“identification information”) or of other sorts of particularly sensitive information (“sensitive personal information”, “restricted adoption information” and “restricted parental order information”) is prohibited, but with the court having power to relax the prohibition and allow publication;
 - b) publication of all other information is permitted, but with the court having power to prohibit or restrict publication.

Part 3: Miscellaneous and Final Provisions

19. This Part provides for amendments to the pupil and parent complaints system in Chapter 2 of Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 (“the ASCLA 2009”) and makes an amendment to the fees regime for inspection of independent schools under the Education and Skills Act 2008. It also includes standard provisions on extent and commencement.

Schedules

20. Schedule 1 contains amendments to Part 2 of the Act. The amendments will alter the circumstances in which “sensitive personal information” relating to certain family proceedings may be published. Sections 19 and 20 set out conditions which must be met before an order bringing Schedule 1 into force may be made.
21. Schedule 2 contains a list of information which is to be regarded as “sensitive personal information” for the purposes of Part 2. Schedule 3 contains minor and consequential amendments relating to the substantive provisions in all Parts of the Act. Schedule 4 contains a list of provisions repealed by the Act.

COMMENTARY ON SECTIONS

PART 1: CHILDREN AND SCHOOLS

Children with special educational needs etc

Section 1: School inspections: pupils with disabilities or special educational needs

22. This section amends section 5 of the Education Act 2005 (duty to inspect certain schools in England at prescribed intervals). The effect of the amendment is to require the Chief Inspector to consider the needs of children with disabilities or special educational needs in reporting on how well a mainstream school (as defined) meets the needs of its pupils.

Section 2: Right of appeal against determination by local authority not to amend statement

23. This section provides a new right of appeal to the First-tier Tribunal (Special Educational Needs and Disability) for parents in circumstances where, following a review of a statement of special educational needs (SEN), a local authority in England decides not to make any changes to the statement. Section 328 of the the EA 1996 imposes requirements in relation to reviews. It provides that all statements must be reviewed within the period of 12 months beginning either with the date on which the statement was made or with the date of the previous review. This means that all of the stages of the review including the local authority's decision on whether to amend a statement must be completed within the 12 month period.
24. Part 4 of the EA 1996 provides for local authorities to make provision for children with SEN, including the drawing up of SEN statements where they are considered to be appropriate. The statement describes the special educational provision that an individual child will receive. Statements must be reviewed annually but can also be reviewed at other times. Parents have the right of appeal to the Tribunal in certain circumstances.
25. Section 2 inserts a new section after section 328 of the EA 1996 to introduce a right for parents to appeal in situations where, following a review, the local authority has not made any changes to a statement and the parents want changes which were suggested in the report on the review submitted by the head teacher to be made, or want other changes to be made. The local authority must inform the parents in writing if it decides not to amend the statement and must also inform them of their right to appeal to the Tribunal.

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26. The appeal may be in relation to:
- a) the description of the local authority's assessment of the child's special educational needs in the unamended statement;
 - b) the special education provision in the unamended statement and the name of a school specified in it; or
 - c) the fact that no school is named in the unamended statement.

Exceptional provision for ill or excluded children etc

Section 3: Exceptional provision of education in short stay schools or elsewhere

27. Section 19 of the EA 1996 imposes a duty on local authorities to make arrangements for securing suitable education for children who, because of exclusion from school, illness or for any other reason, may not receive such education if the arrangements are not made for them. Thus an authority has a duty to arrange education for every child of compulsory school age who, for some reason, cannot attend a mainstream or special school.
28. *Subsection (2)* of section 3 inserts a new subsection (1A) into section 19. This provides that in relation to England the duty to make arrangements for the provision of education under section 19(1) does not apply in the case of a child who will cease to be of compulsory school age within the next six weeks (ie a child in the final weeks of year 11 at school) and who does not have any further public examinations or assessments for public qualifications to complete. This amendment ensures that the duty to make arrangements for the provision of education does not apply in the case of a pupil who has effectively come to the end of his or her compulsory schooling by completing any public examinations etc taken at the end of that stage of a child's education (but who is technically still in the final weeks of compulsory schooling). This reflects the practice in maintained schools where equivalent pupils at a school are excused from attending after the completion of their public examinations etc.
29. *Subsections (3) and (4)* of the section replace the existing subsection (3A) of section 19 of the EA 1996 with new subsections (3A) and (3AA) and amend subsection (3B) of the section. The existing subsection (3A) requires local authorities in England to arrange suitable full-time education for excluded pupils. The amendments extend the requirement to arrange full-time education to all children in England who qualify under section 19(1). The existing provisions allow for regulations to prescribe exceptions from the duty to provide full-time education. There will continue to be exceptions but these will appear in the primary legislation rather than in subordinate legislation.
30. The new subsection (3A) (as inserted by section 3) requires a local authority in England to make arrangements for the provision of full-time education for children who fall under section 19(1) but allows for part-time education to be arranged in the case of a child falling within the new subsection (3AA). That subsection applies to children for whom the local authority considers that, for reasons which relate to their

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physical or mental health, it would not be in the child's best interests for full-time education to be provided. Where part-time education is considered appropriate it must be education arranged on such part time basis as the authority considers to be in the child's best interests. The new subsection (3A)(1)(b) will govern the local authority's decision only as to the amount of provision to arrange for any child. The nature and type of any provision will still be governed by the requirement of 'suitability' in subsection (1) and (6) of section 19.

31. Examples of the types of situation in which it is envisaged a child might fall within the exception to full-time provision might be children with chronic illness, or disability after an accident or some other reason connected to their welfare.
32. Subsection (3B) of section 19 is amended by the section so as to alter the existing power to make regulations which determine the day from which education must be provided for a child in England, to include all arrangements under section 19(1) rather than just under subsection (3A) as previously. The current intention is to replicate the provisions of the existing regulations which provide for the duty to have effect from the 6th day.

Powers of governing bodies

Section 4: Power to provide community facilities etc

33. Governing bodies of maintained schools have a power in section 27 of the Education Act 2002 ("the EA 2002") to provide any community facilities or services which further any charitable purpose for the benefit of their pupils, families of pupils and the wider community. However, governing bodies are prevented by section 50(4) of the School Standards and Framework Act 1998 ("the SSFA 1998") from using their delegated budgets for the provision of community facilities or services.
34. Section 4 amends section 27 so as to require governing bodies in England to give consideration at least once in every school year to whether or not to use the power to provide these facilities, and how they might use it. The section also amends section 50 of the SSFA 1998 to allow governing bodies in England to spend their delegated budgets on the provision of those community facilities or services, subject to any specific restrictions set out in regulations.
35. *Subsection (4)* amends section 51A of the SSFA 1998 so that it no longer applies in relation to England. Section 51A enables a local authority to recover from a governing body any amounts spent by the authority as a result of a third party claim against the authority in relation to activities undertaken by a governing body pursuant to section 27 of the EA 2002. These amounts cannot be recovered directly from the governing body due to the restriction in section 50 of the SSFA 1998 on the governing body using its delegated budget for these activities but this will not be the case for schools in England after the coming into force of this section.

Sections 5 to 7- Powers of governing bodies

36. Sections 5 to 7 extend and define powers of governing bodies of maintained schools in England so that certain designated governing bodies can be involved in the establishment of new maintained schools and Academies, and all governing bodies are able to have further involvement in existing maintained schools and Academies.
37. Governing bodies already have certain specific powers, set out in Schedule 1 to the EA 2002, in relation to the conduct of their own school and the provision of advice and assistance to other maintained schools and local authorities. They have other powers, set out elsewhere in legislation. For example, they can provide facilities and services to their own pupils and their families, and the wider community in the furtherance of any charitable purpose under section 27 of the EA 2002.

Section 5: Power to form company to establish Academy, etc

38. Section 5 provides governing bodies in England with a power to form an “Academy Trust”. An Academy trust is a company which can enter into an agreement with the Secretary of State under which the company will establish and maintain an Academy. The section also provides governing bodies with a power to carry out necessary activities in connection with such agreements. The Secretary of State will establish a procedure for designating particular governing bodies and will only enter into such an agreement with a company formed by a designated governing body. The section also allows any governing body of a maintained school in England to be a member of an existing Academy Trust.

Section 6: Powers to assist etc proprietor of Academy and be a member of a foundation

39. Section 6 allows all governing bodies of maintained schools in England to provide advice and assistance to the proprietors of Academies (in the same way that they can already provide advice and assistance to the governing bodies of other maintained schools). The section also allows all governing bodies of maintained schools and maintained nursery schools in England to be members of the foundations of other maintained schools.

Section 7: Power to propose new schools

40. Section 7 allows only governing bodies in England that are designated by the Secretary of State, or by a person authorised by the Secretary of State, to publish proposals under section 7 (in a school competition) or section 11(2) of the Education and Inspections Act 2006 (“the EIA 2006”) to establish new foundation, voluntary or foundation special schools.

Local Safeguarding Children Boards

Sections 8 and 9

41. Sections 8 and 9 make provision for the supply of information to LSCBs. Section 8 makes provision in relation to LSCBs in England, and section 9 in relation to LSCBs in Wales.

Section 8: Supply of information requested by LSCBs in England

42. Section 8 inserts a new section 14B into the Children Act 2004 (“the CA 2004”). New section 14B provides that, if certain conditions are met, a person or body must supply information to a LSCB in England at its request. Firstly, the information must be requested for the purpose of enabling or assisting the LSCB to perform its functions. Secondly, the person or body requested to supply the information must have functions or engage in activities such that the LSCB considers it likely to have information relevant to a function of the LSCB. This would potentially encompass, for instance, a GP who provided medical advice or treatment to a child in respect of whom a LSCB was carrying out a serious case review, or to a family member or carer of that child. It would also potentially encompass a person carrying out voluntary work that brought him or her into contact with such a child or with a family member or carer, or a minister of a church attended by such a child or by a family member or carer. Finally, one of the conditions set out in subsection (4) or subsection (5) of the new section must be met. Subsection (4) of the new section relates to the content of the information that may be requested. Subsection (5) of the new section 14B effectively enables the onward transmission to a LSCB of information that it has previously requested, under the new section, to be supplied to a third party, for instance to a Primary Care Trust, for collation and onward transmission to the LSCB. (But a LSCB may request that information be supplied to a third party for collation and onward transmission only if the third party itself is within subsection (3)). Subsection (6) of the new section provides that a LSCB may use information provided under new section 14B only for the purposes of its functions. Subsection (7) of the new section provides that a LSCB must have regard to guidance issued by the Secretary of State in exercising its functions under the new section.

Section 9: Supply of information requested by LSCBs in Wales

43. Section 9 inserts a new section 32A into the CA 2004. This makes equivalent provision, in relation to LSCBs in Wales, to that made in relation to LSCBs in England by the new section 14B inserted by section 8.

Section 10: Review by Chief Inspector of performance of LSCBs in England

44. Section 10 inserts a new section 15A into the CA 2004. The new section confers power on the Secretary of State to make regulations providing for the Chief Inspector to review specified functions of a LSCB in England. Subsection (3) of the new section provides that the regulations may make provision about reports to be made on completion of a review, and requiring information to be shared with the Chief Inspector for the purposes of a review.

PART 2: FAMILY PROCEEDINGS

Section 11: Restriction on publication of information relating to family proceedings

45. Section 11 provides for the proceedings which are to come within the new publication framework, and for the starting point that no information relating to such proceedings is to be published. There are three exceptions (authorised categories of information). These are authorised publications of relevant court orders or judgments or authorised news publications (both of which are covered in more detail in the sections which follow); and information the publication of which is authorised by rules of court (which will govern disclosure for various purposes much as is presently done by Part XI of the Family Proceedings Rules 1991, amended in April 2009).
46. *Subsection (1)* outlines which proceedings are covered. Family proceedings which the media, but not the general public, are entitled to attend will be included in the new framework.
47. *Subsection (2)* provides for the basic rule of no publication of information relating to proceedings within scope unless the publication comes within one of three authorised categories. It then sets out the three categories. Publication of information which is not within one of the authorised categories will be contempt of court (“publication” being defined in section 21 to include all instances of written and spoken communication, whether between two individuals or for mass consumption by way of press, broadcast media or internet, consistent with existing caselaw). *Subsection (3)* provides a saving for the general inherent jurisdiction of the court to permit publication, which is intended to allow the courts to continue the existing practice of permitting limited disclosures of information for specific purposes on a flexible basis which may not be covered in rules.
48. *Subsection (5)* is a transitional provision which applies the new regime to proceedings which fall under the definition of family proceedings at the time of commencement but later cease to be family proceedings because of changes to the definitions in section 65 of the Magistrates’ Courts Act 1980 and section 32 of the Matrimonial and Family Proceedings Act 1984 (referred to in subsection (4)).
49. *Subsections (4) to (9)* flesh out the detail of what “relevant family proceedings” are. “Family proceedings” will mean the same as in existing legislation, but “relevant family proceedings”, to which the new reporting scheme will apply, will not include the types of proceedings listed in *subsection (6)*, which are already subject to a different reporting regime (so the scheme under the 1926 Act is left in place for proceedings it already covers). The Lord Chancellor may by order amend the definition of “relevant family proceedings”, for example to bring new sorts of proceedings into the new reporting framework.

Section 12: Authorised publication of court orders and judgments

50. Section 12 establishes what is an authorised publication of a relevant court order or judgment. These differ in their default position, as explained below.

51. *Subsection (1)* covers court orders, for which the default position is publication. Any publication of the text or a summary of the whole or a part of an order made in proceedings (other than adoption proceedings or parental order proceedings) which does not contain identification information (defined in section 21) relating to an individual involved in the proceedings is authorised, unless the court specifically directs otherwise. Thus, an order in relevant family proceedings other than adoption proceedings or parental order proceedings may be published provided it is anonymised or redacted so that no identification information relating to a person involved in the proceedings is included in the publication; but permission is required from the court to publish the identification information. Orders in adoption proceedings and parental order proceedings (defined in *subsection (5)*) may not be published unless the court expressly permits it and permission may be granted subject to conditions which the court may choose to impose (*subsection (4)* allows for the imposition of conditions).
52. *Subsection (2)* covers court judgments, for which the default position is non-publication. This (as with the similar position for orders in adoption or parental order proceedings) reflects the greater likelihood that the judgment will contain information which, if it were published, would carry a risk of harm to the welfare of a child or other person involved in proceedings. Any publication of the text or a summary of the whole or part of the judgment will be authorised only to the extent specifically directed by the court. Thus a judgment released for publication on the BAILII website, for example, will be publishable freely, while a judgment handed down with no other indication will not be publishable.
53. *Subsection (3)* allows for the court's powers to permit, prohibit or restrict publication of orders and judgments to be exercisable not only on application but also on the court's own initiative.

Section 13: Authorised news publications

54. Section 13 makes provision for authorised news publications. There are five qualifying conditions for a publication to be classified as an authorised news publication. These can be summarised as that publication has to be—
 - a) of information gathered by an accredited news representative through attending the proceedings;
 - b) by that representative, or with his consent or under a contract or similar arrangement, or taken from an existing authorised news publication;
 - c) not of identification information or sensitive personal information, unless expressly permitted by the court;
 - d) not of an order in adoption or parental order proceedings, or any judgment, unless expressly permitted by the court under section 12;
 - e) not of information which the court has ordered not to be published, or of an order which the court has ordered not to be published under section 12.

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55. Condition 1 (set out in *subsection (2)*) requires a news representative to be accredited. Section 21 defines “accredited news representative” to mean a representative of one or more news organisations who belongs to a class of representatives on which rules of court confer a right to attend the proceedings in question. The production of a UK Press Authority Card is set out in rule 10.28 of the Family Proceedings Rules 1991 as sufficient evidence of accreditation. Condition 1 also requires that the news representative acquired the information which is to be published by attending the proceedings. Attendance at family proceedings is governed by rules of court: the Family Proceedings Rules 1991 (rule 10.28) were amended in April 2009 to give the media, but not the public more generally, a right to attend most family proceedings subject to discretion of the court to exclude their attendance in specific circumstances.
56. Condition 2 (set out in *subsection (3)*) requires publication to be by the accredited news representative who acquired the information, or with that representative’s consent or pursuant to a contract or other agreement with that representative (for example, a report submitted to a newspaper by a staff journalist). Publication is also allowed by a person who has obtained the information from an authorised news publication (allowing further reporting of articles already classified as an authorised news publication).
57. Condition 3 (set out in *subsection (4)*) requires that the information is not “identification information” or “sensitive personal information” or “restricted adoption information” or “restricted parental order information”; or that if it is, then either the court has specifically permitted publication of the information, or the information identifies a professional witness and has not otherwise been specifically restricted by the court. “Identification information” and “professional witness” are defined in section 21, “sensitive personal information” in section 21 and Schedule 2 and “restricted adoption information” and “restricted parental order information” in section 15.
58. Condition 4 (set out in *subsection (5)*) in conjunction with Condition 5 (set out in *subsection (6)*), ensures that a publication of an order or judgment which would not qualify as an authorised publication within section 12 cannot qualify as an authorised news publication either.
59. Condition 5 (set out in *subsection (6)*) requires that the publication has not been prohibited by the court, and that it does not breach any restriction imposed by the court, either under the power of the court given in this subsection or under section 12(1)(b) in relation to an order.
60. *Subsection (7)* allows for the Court’s powers to permit, prohibit or restrict publication of information under this section to be exercisable not only on application but also on the court’s own initiative.

Section 14: Permitting publication for purposes of section 13: general

61. Section 14 provides the conditions for the court to exercise its power to relax the automatic restrictions on publication of identification information or sensitive personal information (permitting publication of restricted adoption or parental order information is subject to different conditions provided for in section 15).
62. *Subsection (2)* requires the court to be satisfied of one or more of the matters listed in *subsection (3)* before it can permit the publication. The court is also required by *subsection (4)* to take account of any risk which publication would pose to the safety or welfare of any individual who is either involved in, referred to in or, more widely, connected with the proceedings. A person connected with the proceedings might be, for example, a relative of the child subject to care proceedings, who is not directly involved in the proceedings himself or herself but who frequently looks after the child.

Section 15: Permitting publication for the purposes of section 13: adoption etc

63. Section 15 provides the conditions for the court to exercise its power to relax the automatic restrictions on publication of “restricted adoption information” or “restricted parental order information”. This is information which would lead to the identification of any person as someone who is, or may be, an adopter or adopted person, or the equivalent for parental orders (as defined in *subsection (9)*). This includes information about the whereabouts of such a person.
64. *Subsection (4)* requires the court to be satisfied that the publication of any such information will not prejudice the welfare of the person subject to the adoption or parental order where that person either is a child, lacks the capacity to consent to the publication or cannot be found. It should be noted that the reference to “welfare” does not relate to the upbringing of the child, and there is no intention in using that general term to indicate that the welfare checklist in section 1 of the Children Act 1989 is to be imported as a test.
65. *Subsection (5)* provides that where *subsection (4)* does not apply the court may not permit publication except with the consent of the person subject to the adoption or parental order.
66. *Subsection (6)* requires the court to have regard to whether any prospective or actual adopter of the child (or any parental order equivalent) has consented to the publication.
67. *Subsection (7)*, like section 14(4), requires the court to take into account any risk which publication would pose to the safety or welfare of any individual who is either involved in or, more widely, connected with the proceedings.

Section 16: Prohibiting or restricting publication for purposes of section 13

68. Section 16 provides the conditions for the court to exercise its powers to impose restrictions on publication of information relating to the proceedings.

69. *Subsection (2)* requires the court to be satisfied that there is a real risk that publication would prejudice any one or more of three types of interest: the *safety* of any person, the *welfare* of a *child* or vulnerable adult, or the interests of *justice* in the proceedings in question. “Welfare” has the meaning explained in relation to section 15(4) (paragraph 64, above); and the reference to the interests of justice in the proceedings is intended to cover a wide range of matters, which might include undue impact on the privacy of a person involved in the proceedings.
70. *Subsection (3)* makes specific provision giving the court a power to restrict publication of information which would identify a professional witness. This information would otherwise be publishable in accordance with Condition 3 in section 13. This power may be exercised if the court is satisfied that the information published would lead to the identification of another person involved in or otherwise connected with the proceedings (other than another professional witness), or that the information is sensitive personal information relating to the proceedings. The power may also be exercised if the professional witness is, has been or will be, involved in providing care or treatment for a child or other person involved in or connected with the proceedings, other than for the purpose of being a professional witness. The court may also restrict publication on the ground of risk to safety of the professional witness or his or her family, under subsection (2).

Section 17: Defences to contempt of court

71. Section 17 provides for defences available when information relating to proceedings has been published but is either automatically restricted or restricted by order of the court. The defences will not be available where the person publishing either knew, or had reason to suspect, that the information was restricted. Ignorance of the legislation will not be a defence.
72. There are three defences, all based on ignorance of the nature of the information. In *subsection (2)*, the defence is that the person did not know, and had no reason to suspect, that the information was information relating to the proceedings. In *subsection (3)*, the defence is that person obtained the information from a previous publication and did not know and had no reason to suspect that the previous publication was not an authorised news publication (for example, if it turned out that the previous publication involved information not all of which was obtained by an accredited news representative attending the proceedings in accordance with condition 1 in section 13, and the later publisher had no reason to suspect this). In *subsection (4)*, the defence is that, in a case where all other conditions for a publication to be an authorised publication were met, except condition 3, the person did not know and had no reason to suspect that the information was identification information, sensitive personal information, restricted adoption information or restricted parental order information. (Condition 3 is defined above under section 13). The defence in subsection (4) would not be available to a person publishing in breach of a specific restriction imposed by the court.

Section 18: Appeals against decisions under section 12 or 13

73. Section 18 ensures that provision will be made in rules of court, so far as is necessary, to provide for a system of appeals against decisions to permit or refuse publication.

Section 19: Power to alter treatment of sensitive personal information

74. This section introduces Schedule 1, which provides for amendments designed to change the way in which sensitive personal information is treated under the new reporting regime, from being a category of information which may not be published unless the court gives permission, to being information which, together with other information which is not identification information, may be published unless the court prohibits or restricts publication. These “Part 2 amending provisions” (as they are referred to in *subsection (2)*) include changes in the test which is to apply where the court is considering whether to restrict or prohibit the publication of information in section 16(2), to reflect the fact that information which is more sensitive will be more frequently in issue.
75. The Part 2 amending provisions will have effect only when commenced. *Subsections (3) to (6)* provide for preconditions for the exercise of the power to make an order commencing those provisions, to reflect the fact that the move in sensitive personal information from the starting version of the Act to the amended version is a significant one. The Lord Chancellor must first allow for a period of 18 months to elapse from commencement of section 11 (for any purposes, so that if it is commenced in relation to certain kinds of court, for example, that will start the time period running), and can then (and only then) arrange for a review of the operation of the reporting regime. The review must be carried out not by the Lord Chancellor, but by an independent person appointed by the Lord Chancellor; and the independent person must carry out public consultation as part of the review. A report setting out the conclusions of the review must then be laid before Parliament. Only when all three preconditions (18 month period, review by independent person, laying of report) have been fulfilled may the Lord Chancellor make the commencement order bringing the Part 2 amending provisions into force; and the commencement order itself is subject to affirmative resolution procedure. The Lord Chancellor does not have to commission a review or lay a report before Parliament; but may not commence the Part 2 amending provisions without having done so.

Section 20: Independent review

76. The Part 2 amending provisions will have effect only when commenced. *Subsections (1) and (2)* of section 20 provide preconditions for the exercise of the power to make an order commencing those provisions, to reflect the fact that the Part 2 amending provisions are significantly different from the Part 2 provisions themselves. Not only must the Lord Chancellor first (as with the precondition in subsection (4) of section 19) allow for a period of 18 months to elapse from commencement of section 11, but also a full review of the findings from the pilot scheme for publication of judgments in family proceedings must have been completed. Only when both conditions have been fulfilled may the Lord Chancellor commission an independent review and evaluation of the operation of the reporting regime.

77. This independent review and evaluation must include an evaluation of Part 2 of the Act and the impact of the changes to rules governing media attendance at family proceedings made in April 2009. A report setting out the conclusions of the review must then be laid before Parliament. Only when all three preconditions (18 month period, independent review, laying of report) have been fulfilled may the Lord Chancellor make the commencement order bringing the Part 2 amending provisions into force; and the commencement order itself is subject to affirmative resolution procedure. The Lord Chancellor does not have to commission a review or lay a report before Parliament; but may not commence the Part 2 amending provisions without having done so.

Section 21: Interpretation of Part 2, etc

78. Section 21 defines various terms used in the preceding sections. *Subsection (1)* defines specific terms; *subsection (2)* supplements the definition of “identification information” by listing matters, particulars of which will be identification information in relation to an individual if they are likely to lead members of the public to identify the individual; *subsection (3)* explains the meaning of “involved in the proceedings”; and *subsection (4)* empowers the Lord Chancellor to amend subsection (1) to change the definition of professional witness and the list of sensitive personal information set out in Schedule 2, by statutory instrument subject to affirmative resolution procedure (see *subsection (6)*).
79. The definition of “identification information” refers to “someone who is or has been involved in or otherwise connected with the proceedings”. This reference to “has been” confers indefinite anonymity on those who have been involved in, referred to in or otherwise connected with the proceedings (with the exception of professional witnesses, as defined in section 21).
80. *Subsection (7)* provides for courts to retain their existing powers, other than under these sections, to prevent or restrict the publication of information in relevant family proceedings. These may relate to different sorts of confidential information, for example.
81. *Subsection (8)* is a transitional provision which applies the new regime to proceedings commenced or still active after the legislation comes into force but leaving the existing law to apply to proceedings which were concluded before the commencement of the legislation.

*These notes refer to the Children, Schools and Families Act 2010 (c.26)
which received Royal Assent on 8 April 2010*

PART 3: MISCELLANEOUS AND FINAL PROVISIONS

Section 22: Amendments of provisions about complaints in ASCLA 2009

82. This section makes amendments to the parent and pupil complaints system in Chapter 2 of Part 10 of ASCLA 2009. *Subsection (2)* amends section 207(5) of that Act, to insert the word “*frivolous*” to enable a Local Commissioner to reject a complaint on the basis that it is frivolous as well as on the basis already provided for in ASCLA that it is vexatious, because it lacks merit or does not justify investigation. *Subsection (3)* extends the absolute privilege against liability in defamation afforded to governing bodies of maintained schools in relation to their communications with a Local Commissioner, to head teachers of those schools as well.

Section 23: Fees for pre-registration inspections of independent educational institutions

83. This section amends section 111 of the Education and Skills Act 2008 to enable regulations to require the proprietor of an independent educational institution to pay a fee for an inspection carried out for the purposes of determining the institution’s readiness for registration. (Such an inspection will be carried out under section 99 of that Act.) Academies, City Technology Colleges and City Colleges for the Technology of the Arts are not required to pay inspection fees.

Section 24: Interpretation of Act

84. References in the Act to other Acts are abbreviated. This section specifies the abbreviations used. It also provides that section 5 is to be read as though it were part of the EA 1996.

Section 25: Amendments and repeals

85. This section gives effect to Schedules 3 and 4 which contain minor and consequential amendments to other Acts and repeals.

Section 27 Transitional provision

86. Section 27 has effect only until 5 May 2010. The Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010, made on 31 March 2010 under section 162(1) of the EIA 2006, which comes into force on 5 May, replaced references in Acts to local *education* authorities with references to local authorities. The effect of section 27 is that, until that day, any reference in the Act to a local authority is to be read as a reference to a local education authority.

TERRITORIAL EXTENT AND APPLICATION

87. With one exception, the Act extends to England and Wales only, though much of the Act applies only in England. A technical amendment is made to the law of Northern Ireland as a result of other changes made by Part 2 of the Act, but the effect of the amendment is simply to maintain the current position for Northern Ireland.
88. The Act does not extend to Scotland.

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Territorial Application: Wales

89. Section 9 provides for a LSCB in Wales to be able to require a person or body to supply information to it. Provision to this effect would be within the legislative competence of the National Assembly for Wales. Legislative consent from the National Assembly for Wales for this provision was therefore obtained.
90. Section 29(3) provides that section 9 comes into force on whatever day the Welsh Ministers appoint by order.

COMMENCEMENT

91. Commencement of the provisions in this Act will be by order of the Secretary of State, with the following exceptions.
92. Section 23 (fees for pre-registration inspections of independent educational institutions) will commence two months after Royal Assent.
93. Section 9 (supply of information requested by LSCBs in Wales) will come into force on a date appointed by the Welsh Ministers by order.
94. Commencement of Part 2 of the Act and Part 2 of Schedules 3 and 4 will be by order of the Lord Chancellor.
95. Sections 24 and 26 to 30 come into force on the day on which the Act receives Royal Assent.

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HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament

Stage	Date	Hansard Reference
House of Commons		
Introduction	19 November 2009	Vol 501 Column 143
Second Reading	11 January 2010	Vol 503 Column 425- 528
Committee	19 and 21 January 2010 (evidence) 26 and 28 January 2010 and 2 and 4 February 2010 (scrutiny)	Public Bill Committee, Children Schools and Families Bill
Report and Third Reading	23 February 2010	Vol 506 Column 173-269
Consideration of Lords Amendments	8 April 2010	Vol 508 Column 1223- 1236
House of Lords		
Introduction	24 February 2010	Vol 717 Column 1073
Second Reading	8 March 2010	Vol 718 Column 73-128
Committee (and remaining stages)	7 April 2010	Vol 718 Column 1575- 1608
Royal Assent- 8 April 2010		Commons – Vol 508 Column 1256 Lords- Vol 718 Column 1738

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GLOSSARY OF TERMS AND ABBREVIATIONS

ASCLA 2009	The Apprenticeships, Skills, Children and Learning Act 2009
BAILII	British and Irish Legal Information Institute.
CA 2004	The Children Act 2004
Chief Inspector	Her Majesty's Chief Inspector of Education, Children's Services and Skills
DCSF	Department for Children, Schools and Families
EA 1996	The Education Act 1996
EA 2002	The Education Act 2002
EIA 2006	The Education and Inspections Act 2006
LSCB	Local Safeguarding Children Board
SSFA 1998	The School Standards and Framework Act 1998

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