

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – FAMILY JUSTICE

Section 11: Welfare of the child: parental involvement

105. The purpose of this amendment to section 1 of the Children Act 1989 is to reinforce the importance of children having an ongoing relationship with both parents after family separation, where that is safe and in the child's best interests. The new subsection (2B) of section 1 is explicit that it is not the purpose of this amendment to promote the equal division of a child's time between separated parents. The effect is to require the court, in making decisions on contested section 8 orders, the contested variation or discharge of such orders or the award or removal of parental responsibility, to presume that a child's welfare will be furthered by the involvement of each of the child's parents in his or her life, unless it can be shown that such involvement would not in fact further the child's welfare. Involvement means any kind of direct or indirect involvement but not any particular division of the child's time. . (A "section 8 order" is one of the orders defined by section 8 of the Children Act 1989 - child arrangements orders (which replace contact orders and residence orders), prohibited steps orders and specific issue orders.)
106. The presumption can only apply in the case of a parent falling within the new section 1(6)(a) of the Children Act 1989. A parent falls within section 1(6)(a) if that parent can be involved in the child's life in a way that does not put the child at risk of suffering harm. A parent is to be treated (by virtue of the new section 1(6)(b)) as someone whose involvement will not give rise to a risk of harm to the child unless the court has evidence before it that involvement of that person would give rise to such a risk, whatever the form of the involvement.
107. If a parent can be involved in the child's life in a way that does not put the child at risk of suffering harm (whether that be through direct, indirect or supervised contact) the presumption applies to that parent and the court must then go on to consider whether the presumption is rebutted on the basis that it is shown that the involvement of that parent would not in fact further the child's welfare.
108. Therefore, even where a parent can be involved without posing a risk of harm to the child, the presumption will be rebutted if the court believes that the parent's involvement is not consistent with the child's welfare.
109. In a case where the presumption stands in respect of either or both of the child's parents, the court will be required to presume that the child's welfare will be furthered by the involvement of that parent (or those parents) in the child's life. This will be a consideration for the court to weigh in the balance when deciding whether to make an order (and if so what order to make) in a particular case, along with the other considerations in section 1 of the Children Act 1989, subject to the overriding requirement that the child's welfare remains the court's paramount consideration.

*These notes refer to the Children and Families Act 2014
(c.6) which received Royal Assent on 13 March 2014*

110. A process map and examples are set out at Annex A in order to further explain how the presumption is expected to fit with the decision making process.