

EXPLANATORY MEMORANDUM TO
THE CHILDREN ACT 1989 (CONTACT ACTIVITY DIRECTIONS AND
CONDITIONS: FINANCIAL ASSISTANCE) (REVOCATION AND TRANSITIONAL
PROVISION) (ENGLAND) REGULATIONS 2010

2010 NO. 690

1. This explanatory memorandum has been prepared by the Department for Children Schools and Families and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 To remove the Secretary of State's ability to provide financial assistance for individuals ordered or directed by a court to take part in a contact activity where such activity is undertaken on or after 1 April 2010. Contact activities are designed to promote contact between a parent and their child(ren) and there are currently three types of contact activity available in England: parenting information programmes; domestic violence perpetrator programmes and mediation information sessions. Under the current arrangements, contact activity providers can charge individuals ordered or directed to participate, and the Secretary of State provides financial assistance to those individuals who are eligible for public funding or who would be likely to suffer financial hardship if required to pay, but in future parenting information sessions and domestic violence perpetrator programmes will be provided free of charge to everyone.
3. **Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 Under the Children Act 1989, as amended by the Children and Adoption Act 2006, courts may direct an individual to participate in a contact activity during proceedings or as part of a contact order. The regulations this statutory instrument revokes were made to enable the Secretary of State to provide financial assistance to individuals ordered or directed to take part in a contact activity.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England.
6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

- 7.1. This instrument removes the ability of the Secretary of State to provide financial assistance for individuals required to take part in contact activities from 1 April 2010. The provision of financial assistance has only been necessary because contact activity providers are able to charge individuals ordered to take part.
- 7.2. Crucially, the removal of financial assistance is coupled with a commitment by the Secretary of State to fund providers for every individual ordered or directed to participate in a parenting information programme or domestic violence perpetrator programme. Therefore, the activity will be free at the point of delivery for every participant and providers will be funded for the provision of the activities by the Secretary of State.
- 7.3. The rate of referrals to these contact activities has been lower than expected since their introduction in December 2008. Anecdotal evidence from providers, Cafcass and the courts suggests that one reason for this is the complexity of the current charging and financial assistance arrangements. These are discouraging both courts from referring individuals and those individuals from attending. Referral rates are now gradually rising, and we expect there to be a significant increase in the period April 2010-March 2011. This will be bolstered by the removal of the current charging arrangements and making these contact activities free of charge for every participant.
- 7.4. These changes aim to increase the take-up of contact activities across England, by making it simpler and quicker for parents to participate and ensuring that no one could be dissuaded from a contact activity because of the costs the individual may have to pay. In addition, anecdotal evidence from providers indicates that the current charging and financial assistance system is often causing a delay between the referral and delivery of the activity.
- 7.5. Increasing take-up of contact activities should improve outcomes for children and families since the activities are designed to promote safe and beneficial contact, reduce parental conflict, encourage a quicker settlement and support co-operative parenting. Early feedback from parenting information programme participants suggests that the activity is having a positive impact. The majority feel that the programme has changed the way they listen and respond to their children, improving their awareness of the negative effects on children of the conflict caused by parental separation.
- 7.6. The transitional provision enables the Secretary of State to make payments after 1st April 2010 for individuals who took part in contact activities prior to 1st April 2010. This is necessary because payment of financial assistance is provided directly to providers in arrears. Without this provision the Secretary of State could not pay providers for those individuals who took part in a contact activity under the current system and were deemed eligible for financial assistance.

- 7.7. The removal of the Secretary of State's ability to provide financial assistance also applies to contact activities providing information about mediation which an individual is ordered or directed by a court to attend. The Secretary of State is not providing the same commitment to make these mediation information sessions free at the point of delivery for all individuals. Providers will still be able to charge individuals for participating.
- 7.8. However, the actual impact of this on individuals is expected to be minimal. Under the Legal Services Commission's current arrangements, all individuals who are eligible for public funding are able to attend mediation information sessions free of charge. This includes individuals who are ordered or directed to attend a session by a court. It also includes both parties in cases where one party is eligible for public funding and the other is not. Therefore, the removal of financial assistance will only apply to those individuals not eligible for public funding for a mediation information session but who would, under the current system, be deemed to be likely to suffer financial hardship if required to pay. To date, of the 312 individuals who have claimed financial assistance for a contact activity, only 7 have done so for a mediation information session. This suggests that there is not a significant demand for this financial assistance for mediation information sessions in contrast to other contact activities.
- 7.9. A mediation contact activity costs considerably less than a parenting information programme (£200) or a domestic violence perpetrator programme (£2500). The precise costs of a mediation information session depend on the provider and whether the parents attend together or separately. The Legal Services Commission currently pays £87 for each publicly funded individual who attends and £130 if the two parents attend together. Many providers of mediation information sessions already operate a means-tested sliding scale of charges for individuals not eligible for public funding. Moreover, in practice many providers waive the charges entirely for these individuals to remove any potential financial disincentive for them to attend. Providers hope that by attending the mediation information session the individual will agree to participate in mediation itself.
- 7.10. Therefore, whilst an individual who does not qualify for public funding may well suffer financial hardship if required to pay for a parenting information programme or a domestic violence perpetrator programme, this is not the case for a mediation information session.
- 7.11. The current financial assistance arrangements require substantial administrative resource from DCSF, Cafcass and providers. Court staff, Cafcass and providers are spending a considerable amount of time explaining the current financial assistance arrangements to individuals. We anticipate benefits to children and families of focussing our resources on the front-line delivery of contact activities and away from the administration and explanation of a financial assistance scheme. Overall, these changes will increase the resources available for children and families caught in the conflict caused by relationship breakdown.

8. Consultation outcome

- 8.1 There has not been a formal consultation on these regulations. The administrative burdens and disincentives to the take-up of contact activities caused by the current charging and financial assistance arrangements have emerged as DCSF has reviewed the effectiveness of the current grant arrangements for contact activities providers. This is in preparation for issuing new grants for the period April 2010 to March 2011. It is a matter of urgency that we remove these burdens and disincentives, and replace them with the provision of parenting information programmes and domestic violence perpetrator programmes which are free for every participant, in time for the new grants to be in place on 1 April.
- 8.2 Informal consultation indicates that providers and users of contact activities will welcome the changes because most activities will be free at the point of delivery for everyone and the current system will be simplified.
- 8.3 Although the arrangements for mediation information sessions will be different, any negative impact on individuals is likely to be minimal. As explained in section 7, many providers do not charge individuals for attendance at these sessions and others operate a means-tested, sliding scale of charges. The very small number of claims for financial assistance for mediation information sessions so far indicates that there is not a significant demand for this funding. We do not consider it proportionate to delay making changes which will bring positive benefits to the provision of most contact activities in order to allow a full consultation on the removal of financial assistance for mediation information sessions when there is no evidence that individuals require that financial assistance.

9. Guidance

- 9.1 The changes will be explained to providers in their grant letters and updated information will be provided to the courts, legal practitioners and Cafcass officers in hard copy and via the Cafcass website.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies who are contact activities providers is to reduce the amount of resource they are using in administration of the activities. It will enable them to focus more of their resources on delivery of the activities. They will not have to spend as much time and effort explaining the current financial arrangements and ensuring eligible participants have secured financial assistance before participating.
- 10.2 The impact on the public sector is to reduce the administrative resources required from DCSF and Cafcass to authorise and manage the current charging and financial assistance arrangements.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to those small business approved by the Secretary of State as contact activities providers. As explained in section 10, we expect the impact for providers to be positive and there will not be any additional regulation on small businesses as a result of these regulations.

12. Monitoring & review

12.1 The impact of the contact activity provisions, including these regulations, will be reviewed as part of the post-legislative scrutiny of the Children and Adoption Act 2006. A memorandum will be presented to the relevant select committee in 2011. In addition, providers are required to collect feedback from service users to monitor their satisfaction with the activity, which we would expect to include any dissatisfaction they have with the funding arrangements.

13. Contact

Lizzie Sharples at the Department for Children, Schools and Families Tel: 0207 340 8037 or email: lizzie.sharples@dcsf.gsi.gov.uk can answer any queries regarding the instrument.