

# CHILDREN AND ADOPTION ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS AND SCHEDULES

#### **Part 1 - Orders with respect to children in family proceedings**

##### *Section 1 - Contact activity directions and conditions*

17. **Section 1** inserts new sections 11A to 11G after section 11 of the 1989 Act. Inserted section 11A of the 1989 Act makes provision for courts to make orders for 'contact activity directions' where a court is considering whether to make a contact order (or to vary or discharge a contact order).
18. This allows the court to direct a party to the case, at any stage in proceedings prior to a final order being made as to contact, to undertake activities promoting contact (or 'contact activities'). The type of activities covered by this heading may include, in particular, those referred to in section 11A(5) of the 1989 Act, such as programmes, classes and counselling or guidance sessions which may assist with establishing, maintaining or improving contact with a child. Other possible activities are programmes designed to address a person's violent behaviour in order to facilitate contact and information sessions about arrangements for contact, including information sessions about mediation. Section 11A(6) prevents a contact activity direction being used to require mediation or medical or psychiatric treatment.
19. Section 11B of the 1989 Act provides that a contact activity direction may only be made where there is some dispute about the provision about contact that the court is considering whether to make, i.e. whether to make a contact order, or what its detailed provisions for contact should be. It also provides that the court cannot order a child to take part in an activity, unless that child is the parent of the child concerned. The court cannot order an individual to take part in an activity unless that individual is habitually resident in England and Wales. If an individual who is subject to a contact activity direction ceases to be habitually resident in England and Wales, the contact activity direction will cease to have effect.
20. Section 11B also provides that contact activity directions cannot be used in proceedings where an 'excepted order' is being considered. This means that a contact activity direction may not be made in cases where an adoption order is being considered at the same time as a contact order, or in cases where, post-adoption, a court is considering making, varying or discharging a contact order in relation to someone who, but for the adoption, would have been a relative of the child. These exceptions for adoption cases will not apply where the adoption is, or was, by a partner of one of the child's parents or by a couple, one member of which is a parent of the child.
21. Section 11C of the 1989 Act enables a court to make a 'contact activity condition' when making or varying a contact order under section 8 of the 1989 Act. The condition will require a person to take part in a contact activity. Section 11C(5) provides that the activities that may be required by a contact activity condition are the same as those that may be required by a contact activity direction. The following may be subject to a contact activity condition:

*These notes refer to the Children and Adoption Act 2006  
(c.20) which received Royal Assent on 21 June 2006*

- the person with whom the child concerned lives or is to live;
  - the person whose contact with the child is provided for by the contact order;
  - a person upon whom the contact order imposes a condition under section 11(7)(b) of the 1989 Act.
22. Section 11D of the 1989 Act provides that a contact order which is an 'excepted order' (see section 11B) may not impose a contact activity condition. As with contact activity directions, the court cannot require a child to undertake a contact activity condition (unless the child is a parent of the child concerned), nor can a person who is not habitually resident in England and Wales be subject to a contact activity condition.
23. Section 11E of the 1989 Act sets out what steps the court must take before it makes a contact activity direction or condition. It makes clear that a court can only make such directions or conditions if it is satisfied that:
- the activity is appropriate in the circumstances of the case,
  - the provider of the activity concerned is suitable to provide it, and
  - the activity is available in a place to which it is reasonable to expect the person in question to travel.
24. A court is also required to consider the likely effect of the contact activity on the person who would be required to undertake it, taking into account in particular any conflict with the person's religious beliefs and the times when he or she works or attends an educational establishment. The section provides that a court may ask a CAFCASS officer<sup>1</sup> to provide information on the matters specified in section 11E.
25. Section 11F of the 1989 Act enables the Secretary of State, or the National Assembly for Wales, as appropriate, to make provision by regulations authorising the Secretary of State or the National Assembly for Wales (depending on the ordinary residence of the child) to make payments to assist some of those required to undertake contact activities in paying the charges or fees of those providing the activities. Regulations may provide that the activity provider must have been approved by the Secretary of State (or the National Assembly for Wales) in order for financial assistance to be provided in respect of their activities.
26. Regulations may set a maximum amount of financial assistance that will be paid for a contact activity, may set a sliding scale to determine how much assistance individuals get depending on their financial circumstances, and may provide for payments to be made direct to activity providers rather than to individuals.
27. Section 11G of the 1989 Act provides that a court may ask a CAFCASS officer to monitor compliance with contact activity directions or conditions and to report to the court if there is a failure to comply.

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<sup>1</sup> References in these Notes to CAFCASS officers should be read as referring equally to Welsh family proceedings officers in relation to Wales.