

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: ADOPTION AND CONTACT

Contact

Section 8: Contact: children in care of local authorities

81. Section 34 of the Children Act 1989 provides that where a child is in the care of the local authority the authority must allow the child reasonable contact with their parents or guardians, or certain other persons specified in section 34(1). Local authorities are also required, under *paragraph 15* of Schedule 2 to that Act, to endeavour to promote contact between all looked after children and those persons listed in *paragraph 15(1)*, including the child's parents and other relatives of the child, like grandparents or siblings. This section makes amendments to both of these provisions.
82. *Subsection (2)* amends section 34(1) to make it clear that the local authority's duty to allow reasonable contact between a child in the care of the local authority and those people listed in section 34(1)(a) to (d) is subject to the local authority's duty to safeguard and promote the welfare of looked after children under section 22(3)(a) of the Children Act 1989. If allowing contact with any of those persons would not safeguard and promote the welfare of the child, the local authority should not allow the contact.
83. *Subsection (4)* enables the Secretary of State to make secondary legislation setting out in more detail the matters that the local authority should consider when determining whether contact between the child and any of the people mentioned in section 34(1) is consistent with safeguarding and promoting the child's welfare.
84. *Subsection (3)* inserts a new *subsection (6A)* into section 34 to provide that where a local authority in England is refusing contact under section 34(6) with any of the persons listed in section 34(1)(a) to (d), or where a local authority has obtained a court order under section 34(4) authorising them to refuse contact with any of those persons, the duty in paragraph 15(1) of Schedule 2 no longer applies.
85. *Section 34(11)* provides that before making a care order with respect to any child the court has to consider the contact arrangements that the local authority has made or proposes to make and invite the parties to the proceedings to comment on those arrangements. *Subsection (5)* amends that subsection to provide that the court's duties also apply before the court makes, varies or discharges an order under section 34.

Section 9: Contact: post-adoption

86. This section inserts new sections 51A and 51B into the 2002 Act which provide for the making of orders which deal with contact arrangements at the adoption order stage and subsequently between an adopted child and those persons listed in section 51A(3).

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(c.6) which received Royal Assent on 13 March 2014*

87. Section 51A provides that orders under that section can only be made where an adoption agency has placed or was authorised to place a child for adoption and the court is making, or has made an adoption order.
88. When making the adoption order or at any time afterwards the court may either make an order for contact under section 51A(2)(a) or an order prohibiting contact under section 51A(2)(b). The court may also, when making an adoption order, make an order under section 51A(2)(b) prohibiting contact on its own initiative (section 51A(6)).
89. Section 51A(3) prescribes the persons that may be made subject to an order under section 51A. These include former relatives and guardians of the child, amongst others, as well as any person who has lived with the child for at least one year. Section 51A(7) provides that the one year period need not have been continuous but must not have started more than five years before the application for an order under section 51A was made.
90. Under section 51A(4) the child, the person who has applied for the adoption order or the child's adoptive parents may make an application for an order under section 51A without the permission of the court. Any other person may apply for an order if they have obtained the permission of the court to do so.
91. Section 51A(5) sets out the factors that the court must consider when deciding whether to grant permission, under *subsection (4)(c)*, to apply for an order. It provides that the court must consider the possible harm that might be caused to the child by the proposed application, the applicant's connection to the child, and any representations that are made to them by the child, the person who has applied for the adoption order or the child's adoptive parents.
92. Section 51A(8) provides that where section 51A applies, an order under section 8 of the Children Act 1989 may not provide for contact between the child and anyone who might be named in a section 51A order. Section 26(5) of the 2002 Act is also repealed (by *subsection (3)*) to ensure that no application for a contact order under section 8 of the Children Act 1989 may be made at the same time as an application for an adoption order.
93. An order under section 51A may contain directions on how it will be carried into effect, be made subject to appropriate conditions, be varied or revoked following an application by the child, the adoptive parents or the person named in the order under section 51A and has effect until the child's 18th birthday (section 51B(1)).
94. Section 51B(4) sets out what rules of court may specify and section 51B(3) provides that the court must, in the light of any rules made, draw up a timetable in relation to orders under section 51A and give directions for ensuring, so far as is reasonably practicable, that any timetable is adhered to.
95. Section 1(7) of the 2002 Act is amended to provide that it applies to orders made under section 51A (*subsection (2)*). This means that the requirements of section 1(2) to (4) of that Act, for example, that the welfare of the child must be the court's paramount consideration, apply when the court is considering making an order under section 51A.
96. Section 96(3) of the 2002 Act is amended to provide that it is not an offence under section 95 of that Act (which prohibits certain payments relating to adoption) to make payments for legal and/or medical expenses in relation to an application for a section 51A order (*subsection (4)*).
97. Section 1(1) of the Family Law Act 1986 ("the 1986 Act") is amended to ensure that a section 51A order is classed as a "Part 1 Order" for the purposes of Part 1 of that Act (*subsection (5)*). This enables section 51A orders to be recognised and enforced throughout the UK. Section 2 of the 1986 Act is amended to provide for the circumstances in which a court in England and Wales shall have jurisdiction to make an order under section 51A of the 2002 Act (*subsection (6)*).

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98. Section 9 of the Children Act 1989 is amended to provide that a court must not make a specific issue or prohibited steps order when the same result could be achieved by making an order under section 51A (*subsection (7)*). This makes the position with regards to orders under section 51A consistent with the previous position in relation to residence and contact orders.
99. A number of sections of the Armed Forces Act 1991 (“the 1991 Act”) are amended to add references to any person in whose favour an order under section 51A of the 2002 Act is in force with respect to the child, alongside references to any person named in a child arrangements order which regulates contact (under section 8 of the 1989 Act) (*subsections (8), (9), (10) and (11)*).
100. Paragraphs 12(9)(p) and 13(1)(g) of Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 are amended to ensure that adoption related contact orders under section 51A of the 2002 Act are within the scope of civil legal aid in the same way as orders under section 8 of the Children Act 1989.