

# CHILDREN AND FAMILIES ACT 2014

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 2 – FAMILY JUSTICE

#### *Section 13: Control of expert evidence, and of assessments, in children proceedings*

127. This section makes provision about when expert evidence may be sought or put before the court in children proceedings. It is intended that, in so far as children proceedings are concerned, these measures will replace similar provisions which are contained in the new Part 25 of the Family Procedure Rules 2010 which is inserted into the 2010 Rules by the [Family Procedure \(Amendment\) \(No.5\) Rules 2012 S.I. 2012/3061](#) and came into force on 31 January 2013. The new Part 25 is largely a consolidation of new and old rules relating to the control of expert evidence.
128. *Subsection (1)* requires that any person wishing to instruct an expert to provide evidence for use in children proceedings must first seek the permission of the court to do so; *subsection (3)* similarly requires the court's permission for a child to be medically or psychiatrically examined or otherwise assessed by an expert for the purpose of preparing expert evidence for the court; and *subsection (5)* likewise requires the court's permission for expert evidence, whether in the form of a written report or oral evidence, to be put before the court. Similar restrictions are well established in court rules and are now all set out in Part 25 of the Family Procedure Rules.
129. *Subsections (2)* and *(4)* provide for what is to happen where an expert is instructed or a child medically or psychiatrically examined or otherwise assessed to provide expert evidence for use in children proceedings without first obtaining the court's permission. In these circumstances evidence resulting from the instructions or examination or assessment is inadmissible in children proceedings unless the court rules that it is admissible.
130. *Subsection (6)* sets out the test for permission. The court will only be able to give permission as mentioned in *subsections (1), (3)* and *(5)* if it is satisfied that the expert evidence is necessary to assist the court in resolving the proceedings justly. In reaching that decision, the court has to consider the factors specified in *subsection (7)*, and any additional factors which may be prescribed by way of Family Procedure Rules. The factors have the effect, among other things, that the court will need to consider how the child might be affected if it is likely that the instruction of an expert would lengthen the timetable for the proceedings.
131. *Subsection (8)* excludes certain types of evidence from the ambit of expert evidence so they are not subject to the restrictions set out in the section. These include any evidence given by a person who is a member of staff of a local authority or of an authorised applicant. The purpose is to ensure, for example, that local authority social workers are not captured within the definition of expert evidence and permission is not required before they can provide a report or give evidence. Similarly, evidence given by officers of the Children and Family Court Advisory and Support Service (Cafcass) or Cafcass

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

Cymru, and any evidence provided in connection with determining the suitability of a child for adoption, is not expert evidence and will not be subject to these restrictions.

132. *Subsection (9)* enables “children proceedings” to be defined in the Family Procedure Rules for the purposes of the section.
133. *Subsection (10)* is intended to ensure that any other matter relating to experts in children proceedings can continue to be determined by the Family Procedure Rules.
134. *Subsection (11)* amends section 38 of the Children Act 1989, which enables the court to give such directions as it considers appropriate relating to the medical or psychiatric examination or other assessment of the child when making an interim care order or an interim supervision order (section 38(6)). The new *subsections (7A)* and *(7B)* align section 38 with the new test for permission for expert evidence in children proceedings (as provided for in the previous provisions of section 14) so that the court may only make a direction for such an examination or assessment to be undertaken if it is satisfied that it is necessary to assist the court to resolve the proceedings justly (new *subsection 7A*). In reaching a decision, the court must consider a number of factors mirroring those in *subsection (7)* of the section (*new subsection (7B)*).