

EXPLANATORY MEMORANDUM TO

THE CHILDREN AND YOUNG PERSONS, ENGLAND

**The Children Act 1989 (Contact Activity Directions and Conditions:
Financial Assistance) (England) Regulations 2008**

2008 No. [2940]

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 Under new arrangements set out in the Children Act 1989 as amended by the Children and Adoption Act 2006 (“2006 Act”) parents can be directed or ordered to undertake a contact activity where they cannot agree contact arrangements that would be in the best interests of the child. These Regulations enable the Secretary of State to assist individuals to meet the cost of a contact activity ordered or directed by the Courts by making payment to the providers directly. .

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 This Statutory Instrument is made under powers of the Children Act 1989 (“the Act”), inserted by Part 1 of the 2006 Act. Part 1 of the Act legislates for aspects of the White Paper *Parental Separation: Children’s Needs and Parents’ Responsibilities*. The amendments made by Part 1 of the 2006 Act to the 1989 Act will give the courts more flexible powers to facilitate child contact and enforce contact orders made under section 8 of the 1989 Act. The changes will give courts an important new way to help find solutions in contact cases where there is a serious conflict between parties. The changes also require measures, being led by the Ministry of Justice to modify the Family Proceedings Courts (Children Act 1989) Rules 1991 and associated magistrates’ courts rules.

5. Territorial Extent and Application

5.1 This instrument relates to contact activities or conditions that promote contact with a child, where that child is ordinarily resident in England.

6. European Convention on Human Rights

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

7. Policy background

7.1 Parental separation affects many children and their families. Some three million children will experience the separation of their parents during the course of their childhood. We estimate that each year between, 150,000-200,000 parental couples separate who have been married or cohabiting. If separation is handled well, any adverse impact on their children may be limited, in terms of both time and severity. Many children of separated parents thrive and flourish. But when separation goes badly and in particular, where children are drawn into parental conflict, then the effects can be damaging for children. Evidence shows that children in this situation can suffer poorer outcomes and reduced life-chances. They are more likely to achieve less well at school, to truant or to run away from home. If, however, parents are able to resolve their differences about parenting issues these risks can be avoided.

7.2 The Government is firmly committed to improving the outcomes for children and believes every child should have the opportunity to grow up in a secure and loving family environment. The Government also believes that a child's best interests are usually met by both parents continuing to have a meaningful relationship with, and responsibility for, the child after parental separation, so long as it is safe to do so.

7.3 Part 1 of the Children and Adoption Act 2006 makes provision for courts to improve arrangements to facilitate contact and enforce contact orders for those who go to court for help with a decision on contact arrangements with their children. The courts will have more flexible powers to:

- Direct parties in a contact case to attend a given "contact activity" such as information meetings, parenting programmes/classes or other activities designed to promote contact with the child concerned; and
- Attach conditions to contact orders which may require attendance at a given contact activity.

Where a contact order has been breached without reasonable excuse, courts will be able (on an application) to:

- Impose community-based "enforcement orders" requiring a person to undertake unpaid work and/or
- Award financial compensation from one party to another (for example where the cost of a holiday has been lost).

7.4 Where people are required to attend contact activities intended to help establish, maintain, improve or otherwise facilitate contact with a child, we expect the cost of the activity to be met by the person in question. However, the Government will subsidise payments for activities for those who are in greatest financial need or who would experience financial hardship if they had to pay. This will ensure that children are not disadvantaged by those involved not being able to afford to pay for contact activities either directed or ordered by the court.

7.5 These Regulations enable the Secretary of State to provide financial assistance to those in receipt of a legal aid certificate that relates to family proceedings to fund access to contact activities which will improve contact between children and their parents, where it is in the best interest of the child to do so. The regulations also enable assistance to be provided to those who are likely to suffer financial hardship if they had to pay for the contact activities themselves.

8. Consultation outcome

8.1 A public consultation on the proposed elements of the regulations was undertaken between 4 June and 8 August 2008. The Department held several stakeholder meetings to discuss the new provisions and had been in contact with key stakeholders prior to formal consultation. For these reasons the consultation period of 8 weeks was carried out. The consultation was published on the Department for Children, Schools and Families consultation website and consulted widely with: the Association of Lawyers for Children, Association of District Judges, Bar Council, Cafcass, CAFCASS Cymru, Childline, Children's Society, Council of HM Circuit Judges, Equal Parenting Coalition, Families Need Fathers, Family Justice Council, Family Law Bar Association, Grandparents' Association, Institute of Legal Executives, Justices' Clerks' Society, Law Society, Legal Services Commission, Magistrates' Association, NCH Action for Children, National Council for One Parent Families, National Family and Parenting Institute, Official Solicitor and Public Trustee, Parentline Plus, Ministry of Justice, Senior Judiciary, Resolution, Women's Aid, LGA, Child Poverty Action Group, Association of Directors of Children's Services.

8.2 17 responses were received and our proposals were welcomed by majority of respondents. Respondents also agreed that the legal aid means test was the most appropriate model to determine those eligible for financial assistance. Some concerns were raised about the use of a sliding scale and adding burdens to providers. A full response to the consultation will be available later in the year and published on the DCSF consultation website. The link to the website is: <https://www.dcsf.gov.uk/consultations>.

9. Guidance

9.1 The DCSF is working closely with the Ministry of Justice (MOJ), the Children and Family Court Advisory and Support Service (Cafcass) England and the Welsh Assembly Government (WAG) to ensure that coherent and consistent messages go out to all our key stakeholders about implementation arrangements. A Written Ministerial Statement set out implementation timescales and information via MOJ's newsletter to stakeholders set out the types of activities that will be available. The DCSF, MOJ and Cafcass have also planned training events and contributed to training materials for practitioners, the courts and the judiciary about the implementation arrangements.

10. Impact

10.1 A full RIA was completed at the time of the Children and Adoption Bill and is attached to this memorandum. When parental separation goes badly and in particular, where children are drawn into parental conflict, the effects can be damaging.

Evidence shows that children in this situation have poor welfare outcomes, are more likely to achieve less well at school, to truant or to run away from home and may develop behavioural problems. Where parents are able to resolve their differences (about parenting issues) at the time of separation and then subsequently, these risks can be avoided. Investment at this early stage supports early intervention to avoid problems escalating that may require more intense costly intervention from statutory agencies. Court directed/ordered contact activities are a means of ensuring contact arrangements that are in the best interests of the child. Implementing these regulations should ensure that children are not disadvantaged if their parents are not able to afford to pay for contact activities that are directed or ordered by the Courts. We do not envisage any adverse impact on business, charities or the public sector. Following consultation on the proposed elements of the regulations, majority of respondents welcomed our proposals.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The new provisions will ensure that individuals are not prevented from attending contact activities because of the expense and will promote making contact work. Implementation of the Children and Adoption Act is managed by a cross-Whitehall group comprising MOJ, DCSF, National Offender Management Service (NOMS), Legal Services Commission (LSC) and Welsh Assembly Government (WAG) including Cafcass England and Cafcass CYMRU. As a new service available to the courts, the delivery and benefit of contact activities will be monitored and reviewed by this national implementation group, particularly in relation to compliance.

13. Contact

13.1 Amber Longstaff at the Department for Children, Schools and Families Tel: 0207 273 5492 or email: amber.longstaff@dcf.gsi.gov.uk can answer any queries regarding the instrument.