



## BRIEFING PAPER

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# Children: child arrangements orders – grandparents and court orders for contact with grandchildren (Great Britain)

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## Summary

This House of Commons Library briefing paper considers the arrangements for grandparents applying for a child arrangements order for contact or residence with a grandchild.

The Library takes a number of requests from MPs and their staff on this topic, as often grandparents are unaware that, where agreement cannot be reached with a child's carers, they are not only required to seek a court order (namely a "child arrangements order") but they are usually also required to gain the permission of the court (known as the leave of the court) before they can apply.

The leave requirement is in place "to act as a filter to sift out those applications that are clearly not in the child's best interests". The granting of leave does not raise any presumption that the application for a child arrangements order will succeed.

The leave requirement has remained in place despite having been considered by a number of recent policy reviews. The Labour Government produced a Green Paper in 2010 setting out an intention to remove the requirement to seek leave of the court, although this was never implemented. The Government-commissioned Family Justice Review reported in November 2011 that "the need for grandparents to apply for leave of the court before making an application for contact should remain. This prevents hopeless or vexatious applications that are not in the interests of the child". The Coalition Government accepted this recommendation and the current Conservative Government has not amended the Children Act 1989 in this regard.

In March 2019, the Government said that it planned "significant reforms" to private (and public) law regarding children, although it did not state whether this would include the issue of grandparents requiring leave to apply for a child arrangements order.

In Scotland, under the relevant legislation (Children (Scotland) Act 1995) grandparents do not require the leave of the court before they can apply for a contact order.

This note applies to England and Wales. The arrangements for Scotland are also outlined in section 3 of this paper.

# 1. Court orders for contact and grandparents

This section applies to England and Wales only.

## 1.1 What is a child arrangements order

When it is not possible to reach agreement over the contact or residence for a child, then the matter can be taken to court under private law. Using the principles set out in the Children Act 1989 (“the 1989 Act”) as amended, case law, and guidance (including the Family Procedure Rules 2010), the court will determine matters of contact and residence.

A “child arrangements order” (also known as a “section 8 order”)<sup>1</sup> is defined as follows in the 1989 Act as amended:

an order regulating arrangements relating to any of the following—

- a) with whom a child is to live, spend time or otherwise have contact, and
- b) when a child is to live, spend time or otherwise have contact with any person.<sup>2</sup>

Previously, there were “contact orders” and “residence orders”; since April 2014, these have been replaced by the single “child arrangements order” – the then Coalition Government explained that it saw “value in changing the emphasis of court orders to focus on the practical arrangements for caring for the child, and remove the current emphasis on the labels ‘contact’ and ‘residence’”.<sup>3</sup>

The Department for Education explained that, notwithstanding the adaptation of the term “child arrangements order”, existing contact orders and residence orders “will remain valid, and any allowances or other entitlements which are linked to them are not therefore affected by the change”.<sup>4</sup>

## 1.2 The requirement to seek the leave of the court before applying

For grandparents, where contact cannot be agreed with the parents or carers of the child, they are able to apply to a court for a child arrangements order that, if made, can give them contact with a grandchild (or indeed residence if that is what they seek).

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<sup>1</sup> Section 8 of the Children Act 1989 as amended provides for the following types of private law orders: child arrangements order; specific issues order; prohibited steps order. If the term “section 8 order” is used, it is important to know which of the three orders is being referred to.

<sup>2</sup> Section 8(1) of the Children Act 1989

<sup>3</sup> Ministry of Justice and Department for Education, [The Government Response to the Family Justice Review: A system with children and families at its heart](#), Cm 8273, February 2012, p69

<sup>4</sup> Department for Education, [Court orders and pre-proceedings – For local authorities](#), April 2014, p7, para 6

However, unlike a parent, a grandparent typically first requires the leave of the court before they can apply – they are not automatically entitled to apply for a child arrangements order unless they happen to meet one of the requirements for entitlement to apply without leave.

### **Box 1: Entitlement to apply for a child arrangements order without leave**

A grandparent may be automatically entitled to apply for a child applications order under section 10(5) of the *Children Act 1989* if they are:

- any person with whom the child has lived for a period of at least three years; section 10(10) of the *Children Act 1989* states this period “need not be continuous but must not have begun more than five years before, or ended more than three months before, the making of the application”;
- any person—
  - who has the consent of each of the persons named in a child arrangements order in force relating to with whom the child is to live or when the child is to live with any person;
  - who has the consent of each person in who favour the order was made in any case where there is an existing order for care in force<sup>5</sup>;
  - who has the consent of a local authority in any case where the child is in the care of that local authority;
  - who has parental responsibility for the child by virtue of provision made under section 12(2A); or
  - in any other case, has the consent of each of those (if any) who have parental responsibility for the child<sup>6</sup>;
- a relative of a child, if the child has lived with the relative for a period of at least one year immediately preceding the application.<sup>7</sup>

## **1.3 The basis on which a court determines whether to grant leave**

Any person, including a grandparent, may make an application for a child arrangements order if they obtain the leave of the court to do so. Importantly, the granting of leave does not raise any presumption that the application will succeed.<sup>8</sup>

When a court considers an application for leave to apply for a child arrangements order, the welfare of the child is not its paramount consideration – this is a matter, assuming that leave is granted, for the substantive hearing to consider.<sup>9</sup>

Instead, the criteria set out in section 10(9) of the *Children Act 1989* as amended apply, which states that:

the court shall, in deciding whether or not to grant leave, have particular regard to—

- a) the nature of the proposed application for the section 8 order;
- b) the applicant’s connection with the child;

<sup>5</sup> *Children Act 1989*, section 10(5)(c)

<sup>6</sup> *Children Act 1989*, section 10(5)(c)(iii)

<sup>7</sup> *Children Act 1989*, section 10(5B)

<sup>8</sup> Hershman and McFarlane, *Children Law and Practice*, para B600

<sup>9</sup> As above, para B606



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- c) any risk there might be of that proposed application disrupting the child's life to such an extent that he would be harmed by it; and
- d) where the child is being looked after by a local authority—
  - (i) the authority's plans for the child's future; and
  - (ii) the wishes and feelings of the child's parents.

### 1.4 If leave is granted

If leave is granted, then a child arrangements order can be applied for. When the court determines whether to make (or vary or discharge) such an order, then "the child's welfare shall be the court's paramount consideration".<sup>10</sup> For more information, see the Library briefing paper, [Children: when agreement cannot be reached on contact and residence \(England\)](#).

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<sup>10</sup> Children Act 1989, section 1(1)

## 2. Recent consideration of the policy towards grandparents

### 2.1 Labour Government Green Paper (January 2010)

In 2010, the Labour Government published a consultative green paper entitled “Support for All: the Families and Relationships”.

The consultation asked for responses to the question “how far does the need to seek leave of court act as a barrier to prevent extended family members applying for contact with a child? Is there a need to remove this requirement for some other family members, beyond grandparents?”,<sup>11</sup> and set out the then Government’s position on this matter:

At present, grandparents who wish to obtain a contact order in respect of their grandchildren have to seek the leave of the court before doing so. The Government intends to remove the requirement for grandparents to obtain the leave of the court before making an application for a contact order and would be interested in views as to how far this acts as a barrier for other family members, particularly step family members.<sup>12</sup>

The consultation closed on 21 April 2010 – this turned out to be after Parliament had dissolved for the May 2010 General Election which the Labour Government lost.

### 2.2 Family Justice Review (November 2011) and Government response

#### The Panel’s interim and final reports

The incoming Coalition Government, led by David Cameron, did not carry forward the “Support for all” Green Paper consultation started by the Labour Government. However, it did support the continuation of the independent Family Justice Review, led by David Norgrove, which had been established under the Labour Government in March 2010.

In its Interim Report published in March 2011, the Panel said that having “considered the evidence”, it had “concluded that, while it is important that all relationships the child holds most significant are able to continue in a meaningful and practical way following separation, the need to apply for leave should remain” for grandparents, and cited the following reasons:

- “a significant number of submissions pointed out that, just as contact is not a right of parents but of the child, grandparents do not have a ‘right’ to contact”;
- “research ... showed that grandparents are unlikely to lose contact with a grandchild if they had meaningful contact whilst

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<sup>11</sup> Department for Children, Schools and Families, [Support for All: the Families and Relationships Green Paper](#), Cm 7787, January 2010, p13

<sup>12</sup> As above, p89, para 4.39

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the parental relationship was still in being and if they resist taking sides after the separation”;

- the panel said that it was “not convinced that the courts are refusing leave unreasonably or that seeking leave is slow or expensive for grandparents”;
- it added that “it is apparent that the requirement to seek leave does serve a purpose, however, in preventing hopeless or vexatious applications that are not in the interests of the child”.<sup>13</sup>

Reflecting on the responses received to the interim report’s stance on this matter, the Panel’s Final Report published in November 2011 stated that “we recognise the importance to children of relationships with their grandparents and recommend that this be emphasised in the process to come to an agreement about their future care. However we continue to feel that the requirement for grandparents to seek leave of the court before making an application is not overly burdensome and should remain”.<sup>14</sup>

### The Government’s response

The then Coalition Government agreed with the recommendation to retain the need to seek leave of the court, “because it acts as an important safeguard for children and their families”:

We agree with the Panel that grandparents should continue to seek permission before making an application to court for contact. We want to encourage and support grandparents, like parents, to settle their differences outside of the court process.

But grandparents themselves sometimes lose contact with their grandchildren as a result of parental separation. We are clear that the importance of children’s relationships with other family members should be emphasised and will ensure this issue is fully reflected in the process for making Parenting Agreements and in bespoke parenting classes for separating parents.<sup>15</sup>

## 2.3 Possible reopening of the issue

During a Westminster Hall debate in April 2017, the then Minister for Courts and Justice, Sir Oliver Heald, appeared to herald a further consideration of the issue.

Replying to the debate, entitled “Grandparents’ Rights: Access to Grandchildren”, the Minister told the House that, should a Conservative Government be re-elected at the 2017 General Election, then “we will introduce a Green Paper later in the year on family justice, which will provide the opportunity to look at these issues and a number of others that hon. [honourable] Members touched on”.<sup>16</sup>

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<sup>13</sup> Family Justice Review, [Interim Report](#), March 2011, pp160-161, paras 5.82-5.84

<sup>14</sup> Family Justice Review, [Final Report](#), November 2011, p143, para 4.45

<sup>15</sup> Ministry of Justice and Department for Education, [The Government Response to the Family Justice Review: A system with children and families at its heart](#), Cm 8273, February 2012, p22

<sup>16</sup> [HC Deb 25 April 2017 c498W](#)



Subsequently, the Conservative Party's manifesto for the 2017 General Election, while not referring explicitly to a family law Green Paper or to the issue of grandparents requiring leave, stated that "we shall explore ways to improve the family justice system. The family courts need to do more to support families, valuing the roles of mothers and fathers, while ensuring parents face up to their responsibilities".<sup>17</sup>

In October 2017, in response to the written parliamentary question "what the timetable is for the publication of the Government's Green Paper on family justice", the Minister for Justice, Dominic Rabb, told the House:

I am clear that we need to look across the entire family justice system to make sure it is delivering the best outcomes for children and families, and protecting its most vulnerable users. We are working to consider what further changes are needed and will bring forward our proposals in due course".<sup>18</sup>

The Government provided more information in February 2019 in response to further parliamentary questions on grandparents (with answers provided by the then Parliamentary Under Secretary of State at the Ministry of Justice, Lucy Frazer):

The Department is considering whether further measures are needed to help grandparents maintain relationships with their grandchildren following parental separation and will announce its plans in due course.<sup>19</sup>

[...]

**Asked by Anna McMorin**

To ask the Secretary of State for Justice, pursuant to the Answer of 24 July 2018 to Question 164517 and the Answer of 4 February 2019 to Question 213335 on Child Arrangement Orders, what timescale is in place for his assessment of steps to help grandchildren maintain contact with their grandparents after a parental separation.

**Answered by: Lucy Frazer**

The Government has acknowledged calls for reform. This is an important area on which we are reviewing options.<sup>20</sup>

However, in March 2019 the Ministry of Justice dropped the proposed Green Paper, and instead said that "significant reforms" to private (and public) family law were planned – it remains unclear if this will include considering the issue of grandparents requiring leave to apply for a child arrangements order, not least as (at the time of writing) no further parliamentary questions have been asked on this topic since February 2019.<sup>21</sup>

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<sup>17</sup> Conservative and Unionist Party, [Forward, Together – Our Plan for a Stronger Britain and a Prosperous Future](#), May 2017, p73

<sup>18</sup> [PO 107456 19 October 2017](#)

<sup>19</sup> [PO 213335 4 February 2019](#)

<sup>20</sup> [PO 217676 18 February 2019](#)

<sup>21</sup> [PO 228670 21 March 2019](#)

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The Conservative and Unionist Party's manifesto for the December 2019 General Election did not refer to reform of family law or grandparents in this regard.<sup>22</sup>

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<sup>22</sup> Conservative and Unionist Party, [Get Brexit Done – Unleash Britain's Potential: The Conservative and Unionist Party Manifesto 2019](#), November 2019

### 3. The current law in Scotland and possible changes

The following information is taken from the Scottish Parliament's Information Centre's (SPICe) briefing, "Grandparents' rights". It highlights that, unlike England and Wales, grandparents do not require the leave of the court before applying for contact in relation to a grandchild. However, both legal systems have in common the requirement for the courts to decide the case according to various statutory criteria, with the child's welfare the paramount consideration.

SPICe states that:

In Scotland, Part 1 of the Children (Scotland) Act 1995 sets out the legal framework that applies to grandparents. The 1995 Act was last reformed in 2006 (with no relevant changes for grandparents) and is currently one of the main subjects of the Scottish Government's wide-ranging consultation.

[...]

Grandparents living in Scotland must apply for a contact order in the local sheriff court ... [The court] will decide the case according to various statutory criteria, with the child's welfare the paramount consideration. In other words the legislation is child-centred, not grandparent-centred, and there is no guarantee of success for the adults involved.

The law south of the border puts an extra procedural hurdle in front of grandparents which does not exist in Scotland. The grandparents must ask the court's permission to apply to the court at all, referred to as seeking leave of the court.<sup>23</sup>

During 2018, the Scottish Government held a consultation entitled "Review of Part 1 of the Children (Scotland) Act 1995 and creation of a family justice modernisation strategy",<sup>24</sup> which in turn contributed to the Children (Scotland) Bill which began its passage through the Scottish Parliament in September 2019.<sup>25</sup>

The consultation sought views on the question of whether "there should be a presumption in section 11 of the 1995 [Children (Scotland)] Act that children should have contact with their grandparents. If any such presumption should be added to section 11, the starting position of the court would be that children benefit from contact with their grandparents. Any such presumption would be rebuttable".<sup>26</sup>

At the time of writing, the Bill is continuing to progress through its stages although it does not propose any changes to grandparents rights to contact with grandchildren. However, the consultation included a

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<sup>23</sup> Scottish Parliament Information Centre, [Grandparents' rights](#), 22 May 2018

<sup>24</sup> Scottish Government, [Review of Part 1 of the Children \(Scotland\) Act 1995 and creation of a family justice modernisation strategy](#), webpage accessed on 23 December 2019

<sup>25</sup> Scottish Parliament, [Children \(Scotland\) Bill](#), webpage accessed on 23 December 2019

<sup>26</sup> Scottish Government, [Review of Part 1 of the Children \(Scotland\) Act 1995 and creation of a family justice modernisation strategy](#), webpage accessed on 23 December 2019, para 4.29

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question on grandparents (as noted above), “meaning future reform to the law is possible” according to SPICe.<sup>27</sup>

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<sup>27</sup> Scottish Parliament Information Centre, [Contact Between Grandparents and their Grandchildren](#), 22 May 2018

## 4. Other sources of information and advice

The [Family Mediation Council](#) can provide information about family mediation and how to find the nearest mediation service (including those providing a MIAM).

A guide about the family courts for separating parents and children and is available from [Cafcass](#).

For advice about Contact Centres, which are neutral places for contact to take place between children of separated families and family members, contact the [National Association of Child Contact Centres](#).

The Library note [Legal help: where to go and how to pay](#) sets out information about where to seek legal help or advice.

Organisations that may be able to help with queries related to grandparents access to their grandchildren include:

- [AdviceNow](#) (run by the charity Law for Life: the Foundation for Public Legal Education) – [contact form](#);
- [Child Law Advice](#) (part of the charity Coram Children’s Legal Centre) – 0300 330 5480;
- [Citizens Advice](#) – 03444 111 444;
- [Families Need Fathers](#) (a single parents’ charity not just for fathers) – 0300 0300 363;
- [Family Law Panel](#) (offers initial information free of charge and reduced fee scheme for low income individuals) – [links to find local solicitors, barristers and mediators](#);
- [Family Lives](#) (a charity providing advice to families) – 0808 800 2222;
- [Family Rights Group](#) (a charity that works with parents whose children are in need, at risk or are in the care system and with members of the wider family who are raising children unable to remain at home) – 0808 801 0366;
- [Gingerbread](#) (a single parents’ charity) – 0808 802 0925;
- GOV.UK, [Contact with your grandchild if their parents divorce or separate](#);
- [Grandparents Plus](#) (a grandparents’ charity) – 0300 123 7015;
- [Resolution](#) (a member organisation for professional who believe “in a constructive, non-confrontational approach to family law problems”) - [online directory](#).<sup>28</sup>

The NSPCC also provides a list of organisations who can help with private law matters, such as parental responsibility, on their webpage [Separation and divorce](#).

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<sup>28</sup> Organisations include those listed on the [Advice Now website’s “Help Directory”](#) under the heading “Family Problems”.

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In terms of the legislation and related guidance, the following is relevant:

- [Children Act 1989 as amended](#);
- [Children Act 1989: court orders](#), statutory guidance, April 2014, Department for Education (in particular chapter 1);
- [Family Procedure Rules 2010](#), Ministry of Justice.



## Other Library briefings on private child law and related topics

- [Children: parental responsibility – how it's gained and lost, and restrictions \(England and Wales\)](#)
- [Children: child arrangements orders – when agreement cannot be reached on contact and residence \(Great Britain\)](#)
- [Children: parental alienation and the role of Cafcass \(England\)](#)
- [Children: child arrangements orders – safeguards when domestic abuse arises \(England and Wales\)](#)
- [Confidentiality and openness in the family courts: current rules and history of their reform \(England and Wales\)](#)
- [International child abduction – preventing abduction and recovering children \(England and Wales\)](#)

### Version control

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1.0	10/2/20	Replaces CBP7574 (last updated 9/8/17) and provides updated information (chapters 2 and 3 in particular) and new section 4 added
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