



## Family Justice Review update: Contact and other issues for parents following separation

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In March 2010 the then Labour Government appointed a board, led by David Norgrove, to carry out a review of the family justice system. The Coalition Government that took office shortly afterwards supported the review. The board's final report was published in November 2011, and the Government response followed in February 2012.

This note provides a brief overview of the Review's proposals relating to child contact issues and Government's response to them, as well as the subsequent steps being taken.

Information on the current position in these areas can be found in the Library standard note [Children: Residence and contact related matters for parents, grandparents and others after separation](#), SN/SP/3100. The Library standard notes on [Children: Enforcement of Contact orders](#), SN/SP/3101, and on [Parental Responsibility](#), SN/SP/2827, may also be of interest.

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## 1 Family Justice Review and the Government Response

In March 2010 the then Labour Government appointed a board to carry out a review of the family justice system, which was also supported by the Coalition Government that took office shortly afterwards. David Norgrove, then Chair of the Pensions Regulator and former economist at the Treasury, private secretary to Margaret Thatcher and Director at Mark's and Spencer, was appointed to lead the review. The Family Justice Review (FJR) began work in March 2010. It was jointly sponsored by the Ministry of Justice (MoJ), the Department for Education (DfE), and the Welsh Government.

The review board published its [final report](#) in November 2011, and the Government published its [response](#) in February 2012.

### 1.1 Proposals relating to contact for children and the Government Response

The FJR made several recommendations that propose to amend the rules surrounding parental contact with children. A table on pages 65-71 of the [Government response](#) set out in full all of the review's recommendations in this area alongside the Government's responses to them.

The Government accepted most of the Review's proposals. However, the Government did not accept the Review's rejection of 'shared parenting', stating that the matter required further consideration.

For ease of reference, the recommendations of the Review that relate to child contact issues and the Government's responses to each point are discussed in more detail below.

#### **Shared Parenting**

The FJR recommended:

No legislation should be introduced that creates or risks creating the perception that there is a parental right to substantially shared or equal time for both parents.<sup>1</sup>

The Government, as previously stated, did not accept this recommendation. The Government response to the Review stated that further consideration of the matter was required:

The Government fully support the Review's view that the vast majority of children benefit from a continuing relationship with both parents, and that shared parenting should be encouraged where this is in the child's best interests and is safe.

The Review's proposals for better parental education, information and access to dispute resolution services should support this objective.

The Government recognises the careful consideration given by the Review to the role of legislation in supporting shared parenting through a change in parental attitudes, underlined by a clear message that the courts will expect both parents to be involved in a child's upbringing, unless there are exceptional reasons why this is not possible. We are particularly aware of the recent experience in Australia of shared parenting legislation and the difficulties that can arise.

On careful reflection, the UK Government believes that legislation may have a role to play in supporting shared parenting and will consider legislative options for encouraging both parents to play as full a role as possible in their children's upbringing. In developing proposals, we will take particular account of the need to avoid the pitfalls which were evident from the operation of legislation in Australia.<sup>2</sup>

### ***Parenting Agreements***

The FJR recommended that parents should be "encouraged to develop a Parenting Agreement to set out arrangements for the care of their children post-separation. Government and the judiciary should consider how a signed Parenting Agreement could have evidential weight in any subsequent parental dispute."<sup>3</sup> The Government accepted this proposal:

Proceedings to resolve family disputes can be lengthy and, where there is high parental conflict, damaging to children. The use of parenting agreements as a means of supporting parents to focus on their child's needs, and agree practical everyday care arrangements, is helpful. It is our intention that parents will be supported to reach such agreements through dispute resolution services, including targeted parenting programmes, so that as many disputes as possible can be resolved without the need for court intervention. We will also work to better integrate local services to support separated and separating parents so that parents have access to a range of appropriate services when they need them.

The Government supports the Review's view that there needs to be less emphasis placed on parents' perceived 'rights' of contact with their children. The Government want parents to focus on the responsibilities they have towards their children, and what children can expect from their parents in terms of their care and meeting their needs.

The Government agrees with the recommendation to consider how a signed Parenting Agreement could have evidential weight in any subsequent court proceedings. The

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<sup>1</sup> [Family Justice Review: final report](#), November 2011, p21

<sup>2</sup> Department for Education and Ministry of Justice, [The Government Response to the Family Justice Review](#), February 2012, p66

<sup>3</sup> [Family Justice Review: final report](#), November 2011, p21

Government will need to determine how the court's procedures and powers would need to change to achieve this, and ensure there is no conflict with the principle that the court's paramount consideration must be the welfare of the child.<sup>4</sup>

### ***Grandparents' application for contact with a child***

Currently, grandparents need to apply for leave of the court before making an application for contact with a child, and the Review recommended that this position remained the same. The Government concurred, while emphasising the importance of children's relationships with their grandparents and its belief that this should be reflected in parenting arrangements:

Currently, when grandparents are required to apply for the court's permission to start proceedings, and permission is granted, only one court fee is payable. The Government thinks this is reasonable.

The Government agrees with the Review's conclusions that the leave requirement should remain because it acts as an important safeguard for children and their families. This is consistent with the principle that the court's paramount consideration must be the welfare of the child.

However, the Government is committed to ensuring that children have meaningful relationships with family members who are important to them following family separation, where it is in their best interests and safe. As a matter of good practice, supporting a child's ongoing relationships with their grandparents and wider family members should be considered when making arrangements for a child's future.

The Government supports the Review's recommendation that the importance of relationships children have with other family members should be emphasised in the process of making Parenting Agreements. The Government will also ensure that a child's relationship with their grandparents is considered in the bespoke parenting classes for separating parents.<sup>5</sup>

### ***Child Arrangements Orders***

The Review made recommendations relating to the development of a 'child arrangements order', which would set out the arrangements for the upbringing of the child when court determination of disputes related to the care of children is required. This would involve repealing the existing residence and contact orders provided for under the *Children Act 1989*. The Government accepted the recommendation to develop child arrangements orders, subject to further work:

The Government sees 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'.

This is consistent with wider measures proposed by the Review to establish a clear focus throughout the process of dispute resolution on the needs of the child. The Government will bring forward legislation on this issue at the earliest opportunity.<sup>6</sup>

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<sup>4</sup> Department for Education and Ministry of Justice, [The Government Response to the Family Justice Review](#), February 2012, p67

<sup>5</sup> Ibid.

<sup>6</sup> Ibid., p69

The Review recommended that existing prohibited steps orders<sup>7</sup> and specific issue orders<sup>8</sup> should be retained for discrete issues where a child arrangements order was not appropriate. The Government agreed:

The Government agrees that there is merit in retaining both specific issues orders, and prohibited steps orders, whilst recognising that the majority of disputes will be resolved through different channels.

Both specific issues orders and prohibited steps orders will be used to resolve less common issues which are less likely to relate to the child's every day care. The retention of these orders will help ensure that both parenting agreements and consideration of a 'Children's Arrangements Order' remains focused on the child's day to day care arrangements.<sup>9</sup>

### ***Parental Responsibility and Child Arrangements Orders***

The Review recommended that the new child arrangements orders should be available to fathers without parental responsibility, as well as those who already hold parental responsibility, and to wider family members with the permission of the court. The Government accepted this recommendation:

The Government agrees that any new order relating to agreements for care of a child should be available to fathers with and without parental responsibility, as well as to wider family members, where the court has granted leave.

This is consistent with current arrangements for eligibility to apply for a contact or residence order under section 8 of the Children Act 1989.

This position is in line with wider measures to ensure that the child remains firmly at the centre of processes for resolving private family law disputes.<sup>10</sup>

In its considerations of the development of child arrangements orders, the review recommended that if a father, as a result of a child arrangements order, would require parental responsibility in order to carry out the care set out in that order, the judge will also make a parental responsibility order. It further recommended that where a child arrangements order requires another family member to have parental responsibility, that person should have parental responsibility for the duration of the order.<sup>11</sup> Subject to further work, the Government agreed:

The Government agrees with the Review that where a father without parental responsibility (PR) is effectively exercising PR as a result of a court order, that should be recognised formally by the court through the award of PR. Existing law already means that the majority of parents acquire PR automatically; unmarried fathers who are given PR by the court in this way should not therefore have their PR limited to the duration of the order.

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<sup>7</sup> Defined on the [Direct.gov website](#) as orders that “mean that someone is not allowed, without the court’s permission, to do the thing set out in the order. For example, you may not want your ex-partner to take your child overseas. You can apply for a Prohibited Steps Order if you are worried about this.”

<sup>8</sup> Defined on the [Direct.gov website](#) as orders that “make instructions on a specific point about your child that you can’t agree on. For example, if you can’t agree where your child should go to school, you can apply for a Specific Issue Order.”

<sup>9</sup> Department for Education and Ministry of Justice, [The Government Response to the Family Justice Review](#), February 2012, p69

<sup>10</sup> Ibid.

<sup>11</sup> [Family Justice Review: final report](#), November 2011, p150

Where a wider family member would need PR to fulfil the order, the PR order should be limited to the duration of the order. If PR were to be awarded to wider family members on an ongoing basis, the child's care arrangements are likely to become unnecessarily complicated.

These proposals are consistent with wider efforts to maintain a clear focus on the child's needs as well as on the responsibilities of other individuals to meet those needs.<sup>12</sup>

### ***Other issues relating to parental responsibility***

The Review recommended that the Government find ways to strengthen the understanding of parental responsibility. The Government accepted this, subject to further work:

The Government recognises that parents are not always aware of the concept or significance of parental responsibility, nor of the adverse impact on children of prolonged parental conflict.

A greater understanding of a parent's responsibilities in law towards a child, and of the importance of focusing on a child's emotional and practical needs, would support wider efforts to help separated parents reach agreement themselves about care arrangements for their children, without recourse to court.

The Government will therefore consider how best to raise awareness of parental responsibility and to support parents in focusing on their child's needs, both in terms of timing and channels of communication.<sup>13</sup>

The Review recommended that the facility to remove a child from the jurisdiction of England and Wales for up to 28 days without the agreement of all others with parental responsibility or a court order should remain, and the Government agreed "on the basis that it can help avoid unnecessary and uncontroversial court applications."<sup>14</sup>

The Review also recommended that the restriction preventing those with parental responsibility from changing the child's surname without the agreement of all others with parental responsibility or a court order should remain in place, and the Government accepted this.<sup>15</sup>

## **2 *Children and Families Bill***

### **2.1 *Announcement of the Bill***

The Queen's Speech on 9 May 2012 announced a *Children and Families Bill*. The Department for Education [press notice](#) published on the same day set out the Government's intentions on legislation relating to family law, which focus on speeding up court processes. The notice announced that the Bill will also contain measures relating to shared parenting:

Ministers intend to strengthen the law to ensure children have a relationship with both their parents after family separation, where that is safe and in the child's best interests.

The Government believes that this will encourage more separated parents to resolve their disputes out of court and agree care arrangements that fully involve both parents.

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<sup>12</sup> Department for Education and Ministry of Justice, [The Government Response to the Family Justice Review](#), February 2012, p70

<sup>13</sup> Ibid., p65

<sup>14</sup> Ibid., p70

<sup>15</sup> Ibid., p71

The Government will consult shortly on how the legislation can be framed to ensure that a meaningful relationship is not about an equal division of time but the quality of time that a child spends with each parent.

This was announced as part of the Government's response to the independent Family Justice Review in February 2012. The review published its final report in November 2011.

The notice stated that the Bill is expected to be introduced early in 2013 and to carry over into the third session of this Parliament for Royal Assent. The Bill is wide-ranging, and will also include proposals on Special Educational Needs, measures on adoption, and extending the powers of the Office of the Children's Commissioner.

## 2.2 Shared Parenting Consultation

On 13 June 2012, the Government published a consultation considering four options for amending the *Children Act 1989* to enshrine shared parenting in law. The consultation considers four options, as set out in the [press notice](#) accompanying the announcement:

Four different approaches are being consulted for amending section 1 of the *Children Act 1989*:

Option 1: requires the court to work on the presumption that a child's welfare is likely to be furthered through safe involvement with both parents – unless the evidence shows this not to be safe or in the child's best interests.

This is the Government's preferred option.

Option 2: would require the courts to have regard to a principle that a child's welfare is likely to be furthered through involvement with both parents

Option 3: has the effect of a presumption by providing that the court's starting point in making decisions about children's care is that a child's welfare is likely to be furthered through involvement with both parents.

Option 4: inserts a new sub-section immediately after the welfare checklist, setting an additional factor which the court would need to consider.<sup>16</sup>

The full [consultation document](#)<sup>17</sup> is available on the DFE website. The consultation closed on 5 September 2012.

## 2.3 Draft legislation: Child Arrangements Orders

In September 2012 the Government published [draft legislation](#)<sup>18</sup> on several family justice matters, including child arrangements orders, for pre-legislative scrutiny. The following section from the explanatory notes sets out the draft legislation's intention to replace existing residence and contact orders with the new arrangement orders:

### ***Clause 2: Child arrangements orders***

23. *Subsection (2)* removes the current definitions in section 8(1) of the Children Act 1989 of a residence order (an order as to the person with whom the child should live) and of a contact order (an order requiring the person with whom the child lives to allow

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<sup>16</sup> Department for Education, *Proposals to enable children to see both their parents are launched*, 13 June 2012

<sup>17</sup> Department for Education, *Cooperative parenting following family separation: Proposed legislation on the involvement of both parents in a child's life*, 13 June 2012

<sup>18</sup> HM Government, *Draft legislation on Family Justice*, September 2012

the child to have contact with the person named in the order). These orders are to be replaced by the child arrangements order, in line with the recommendation made by the Family Justice Review.

24. Entitlement to apply for a child arrangements order will in general mirror the existing entitlement in respect of section 8 orders. But there is one extension of that entitlement. New section 12(2A) of the Children Act 1989 (see paragraph (4) of the Schedule) would allow a court to give parental responsibility to a non-parent/guardian who is named in a child arrangements order as a person with whom a child is to spend time or otherwise have contact, but not as a person with whom the child is to live. New paragraph (d) of section 10(5) of that Act (see paragraph 5(3)(c) of the Schedule) would provide that a person who has parental responsibility by virtue of provision under new section 12(2A) is entitled to apply for a child arrangements order. The Government considers that the extension of entitlement that would be effected by new section 10(5)(d) is narrow because there are likely to be only a few cases in which the court considers it appropriate to give parental responsibility to a person with whom a child spends time or otherwise has contact but does not live.

25. *Subsection (3)* inserts into section 8(1) of the Children Act 1989 the definition of the new child arrangements order. A child arrangements order is an order regulating arrangements relating to with whom a child should live, spend time, or have other types of contact, or when a child should live, spend time or have other contact with a person. The other types of contact the child arrangements order may provide for could include indirect contact such as a telephone call by the parent. As now, specific matters which arise in connection with the exercise of parental responsibility for a child (including matters giving rise to a need to limit the exercise of that parental responsibility), and that do not relate to who the child should live with or have contact with, will be dealt with by means of a specific issue order or a prohibited steps order (as defined in section 8(1) of the Children Act 1989) as appropriate.