

FAMILY JUSTICE (TRANSPARENCY, ACCOUNTABILITY AND COST OF LIVING) BILL

Explanatory Notes

INTRODUCTION

1. These explanatory notes relate to the Family Justice (Transparency, Accountability and Cost of Living) Bill that is set down for Second Reading in the House of Commons on 26 October 2012. They have been prepared by the sponsor of the Bill, John Hemming MP, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Bill has three main parts. The overall purpose of the Bill is to help ensure justice in three areas:

(i) in the family justice system

(ii) in other related areas; and

(iii) for families who suffer from cold homes and fuel poverty.

COMMENTARY

Clause 1: Family group conferences

4. This deals with the point at which most families will commence contact with the Family Justice system or their local Children's Services Authority (CSA). At present this will be at a 'case conference' or more accurately a 'child protection conference' – that is a meeting of professionals who will decide what steps that the CSA should take in respect of a child who may be deemed to be at risk.

5. At present, children (even if old enough to take part), and their families may be excluded from the meetings, and may not see reports that are being discussed. A practice called Family Group Conferencing is being developed by social work agencies. This approach involves the children (where old enough), the families and, where appropriate, the wider families. Clause 1 requires that families are offered a family group conference to try to resolve issues.
6. Subsections (1) to (3) of clause 1, while not abolishing child protection conferences (as they may be necessary at times), establishes as the norm the wholly different approach of a family group conference (FGC) by requiring that families are offered such a facility. An FGC is defined as:

‘a family led, decision making meeting, convened by an independent co-ordinator in which a plan for the child is made by the family, involving the child (if old enough), the parents, and potentially extended family members and friends which addresses any concerns about the child’s future safety and welfare.’
7. Subsection (2) allows the family six weeks to produce a family plan for the child and this is then submitted to the CSA which has to approve or disprove it. In the latter situation, under subsection (3) the CSA is required to ‘try to reach agreement’ with the family on a revised plan. If this is not possible the view of the CSA will prevail, but under subsection (4) the child or the family can appeal that decision to the scrutiny committee of the local authority itself.
8. Subsection (5) deals with the provision of information to children and families. Since 1999 government practice guidance for children’s authorities entitled ‘Working Together’ has stated that ‘the local authority has a responsibility to make sure children and adults have all the information they require to help them understand the processes that are followed when there are concerns about a child’s welfare.’¹ This is guidance, rather than a requirement. Subsection (5) makes this mandatory by requiring that:

‘Any child or parents or other relatives of the child attending a Family Group Conference must be given in advance a publication explaining the childcare system and how it may affect them in the future and referred to an independent advice and advocacy organisation.’
9. Subsection (6) provides for emergencies by stating that the CSA is not under an obligation to offer an FGC if emergency action is required to protect a child.

¹ Working Together page 286 para 10.7

Clause 2: Proceedings in the Family Court and the Court of Protection

10. This clause deals with the next step in events – proceedings in the family courts. These courts sit in private in order to protect the anonymity and interests of children. The Bill includes provisions that would make the courts more transparent and accountable. The Bill also provides for greater access to the court by grandparents and wider families of children in certain circumstances.
11. Subsection (1) permits parties to a case to have two ‘friends’ with them, to support, advise or advocate on their behalf. Subsection (1) also ensures that the confidentiality of proceedings is maintained by specifically making these friends ‘subject to the same rules of confidentiality as the party to the proceedings’. So breach of confidentiality would be contempt of court.
12. Subsection (2) deals with accountability by permitting bona fide academic research into proceedings in the family courts. As with subsection (1), subsection (2) also recognises the need to keep proceedings confidential by setting out that:
 - (a) any publication of the research removes all identifying details; and
 - (b) it shall be a contempt of court for any person receiving or publishing information pursuant to this section to reveal the identity of any person whose details he has received.
13. Subsection (3) relates to grandparents and other wider family members of the child. (3)(a) enables those people to attend any part of the hearing that is considering as to whether the child should be placed with them. Subsection (3)(b) permits grandparents to participate in the proceeding if they have had a long term involvement with their grandchildren and have information which could assist the court.
14. Subsection (3) also provides that a judge may exclude the grandparents from that part of the proceedings where the child is giving evidence if, in his opinion, their presence would inhibit the child from giving the evidence.
15. Subsection (4) allows grandparents to have direct and indirect contact with their grandchildren if the child so wishes, without this contact being supervised unless it is not the best interest of the child.
16. Subsection (5) amends the Children Act 1989 to require that children taken into care by their local authority are placed near their home unless it is not in the interest of the welfare of the child to do so.

Clause 3: Children in care

17. Clause 3 deals with children who are in the care of their local authority. Subsection (1) states that where a child in care has made complaints about serious harm, those complaints should be dealt with by a body that is independent from the local authority.

18. Subsection (4) makes it an offence to discriminate against children in care or care leavers.

Clause 4: Amendment to the Adoption and Children Act 2002

19. This clause deals with adoption without the consent of parents. The Adoption and Children Act 2002 permits adoption 'without parental consent' if a child is at risk of harm. In Section 1(4) Parliament laid down legal safeguards that 'the court must have regard to'. These include:

- (i) The child's wishes (where old enough) and needs, and the lifelong effect on him of losing contact with his birth family,
- (ii) The harm that the child has suffered or might suffer,
- (iii) The relationship the child has with his relatives and the value to the child of it continuing,
- (iv) The ability of the relatives to provide a secure home for the child and the wishes of the relatives.

20. Clause 4 of the bill will require judges to explain how they have considered the points required by section 1(4) of the 2002 Act.

Clause 5: Children and parents: duties of local authorities and other bodies

21. This clause deals with the duties of local authorities and other bodies when children are in care. While maintaining the position established by the Children Act 1989 that the welfare of the children is of paramount importance it also requires the local authority to ensure that the child has access to and contact with both parents and grandparents, unless such contact is not in the interest of the welfare of the child.

PART 2

Clause 7: Right to report wrongdoing

22. Subsection (1) ensures that court orders and the use of court secrecy cannot be used to conceal wrongdoing. It protects whistle blowers from being imprisoned for blowing the whistle to the appropriate regulator.

23. Subsection (2) discourages people from intimidating potential whistleblowers.

Clause 8: Matters relating to court proceedings

24. Subsection (1) removes the offence of scandalising the court.

25. Subsection (2) requires the publication of the names of people who are imprisoned for contempt of court.

26. Subsection (3) assists persons who take public bodies to judicial review by providing certainty as to the potential costs they face should they lose.

Clause 9: The Official Solicitor

27. This clause introduces wider scrutiny of the operations of the office of the official solicitor.

Clause 10: Recording of hearings

28. This clause enables parties to record court hearings and produce their own transcript.

Clause 11: Right to assert litigation capacity

29. This clause enables people who have had their litigation capacity removed to challenge that in the courts.

Clause 12: Ambit of reasonableness in capacity

30. This clause requires public authorities to take account of the decision which a person is proposing to make before deciding whether that person has capacity to make the decision.

PART 3

Clause 13: Strategy

31. Subsection (1) requires the Secretary of State to draw up a strategy to enable people to achieve lower fuel bills and more efficient use of fuels by ‘significant increases’ in the installation of domestic energy efficiency measures and certain types of microgeneration technology by 2015, 2020 and 2025.
32. Subsection (2)(a) specifies that the strategy must ensure that all new homes must comply with Level 6 of the government’s Code for Sustainable Homes by 2016. Subsection (2)(b) specifies that by 2020 the Secretary of State must use such regulations as he considers appropriate to require all new domestic heating systems installed after that date to ‘achieve a step change in energy efficiency or a reduction in fuel bills.’ However, there is a caveat to this duty – the Secretary is only required to do this ‘provided that he is satisfied that it is cost effective’ and that the industry can deliver the equipment in sufficient numbers. This means that the duty to require this to happen only applies if it does not cost consumers extra money to replace their boilers.
33. Subsection (3) requires the Secretary of State to consult on the strategy.

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34. Subsection (4) requires the Secretary of State to ‘use all reasonable endeavours to implement’ the strategy.

PART 4

Clause 15: Short title, commencement and extent

35. Clause 15 makes provision that the Bill extends to England and Wales, and that the provisions of the Bill are to come into force at the end of a period of 6 months beginning on the day on which it is passed.

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