

Transparency and Accountability Bill

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Make provision regarding arrangements for children involved in court proceedings; to make provision about the transparency, administration and accountability of courts and case conferences; to require the Secretary of State to report to Parliament annually on the number of prisoners who have exceeded their tariff and have not been released because they do not admit guilt; to extend the Criminal Cases Review Commission’s powers to obtain information; to make provision about consumer complaints in markets for public services; to amend certain sections of the Freedom of Information Act 2000 relating to contracts; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

FAMILY JUSTICE

1 Children’s Case Conferences

- (1) In this section “case conference” shall mean a meeting arranged by a local authority following an investigation under section 47 of the Children Act 1989 to determine whether to take action under that section. 5
- (2) Any child or parents or other relatives of the child attending a case conference must be given in advance by the chair or the local authority a statement of the matters to be discussed at the case conference; a publication explaining the childcare system and how it may affect them in the future; and copies of any documents or reports to be used at the conference. 10
- (3) Any person attending a case conference may add to or comment on any document or report discussed at that conference.
- (4) Case conferences must be chaired by a person who is not employed by the local authority. 15

- (5) All decisions relating to possible court proceedings made at children’s case conferences shall be determined by secret ballot.
- (6) Any child or their family may appeal against any decision made by a case conference to the relevant scrutiny or appeal committee of the Children’s Services Authority. 5

2 Proceedings in the Family Court and the Court of Protection

- (1) Any party to proceedings in the Family Court or Court of Protection shall be permitted to have up to five observers present providing that no more than fifteen such observers shall be present at any one hearing.
- (2) Any person may give information regarding any proceedings in the Family Court or the Court of Protection to any person carrying out academic research regarding such proceedings who is a member of, or operating on behalf of, an academic institution that has experience and expertise in carrying out such research provided that – 10
- (a) any publication of the research removes all identifying details and any other details that may identify any person; and 15
- (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 they have received.
- (3) Grandparents, siblings of parents or adult siblings of the child concerned who are not parties to a case, shall – 20
- (a) be able to participate in that part of any proceedings which involves considering whether or not the child or children should be placed with them;
- (b) be presumed to be suitable candidates for placement of the child or children without detailed assesment so long as they – 25
- (i) have had care of a child or children before, and
- (ii) have not been subject to a child protection plan or care proceedings; and
- (c) in the case of grandparents be permitted to participate in proceedings if they have had long term involvement with their grandchildren and have information which will be helpful to the outcome of the case, provided that nothing in this Act shall prevent a judge from using their powers to try to ensure that children are able to give evidence without feeling intimidated or inhibited from so doing. 30
- (4) Grandparents shall be permitted to have reasonable direct and indirect contact with their grandchildren if the child so wishes without this contact being supervised unless it is not in the interest of the welfare of the child. 35
- (5) Where the Court decides to place a child other than with its family the Court shall place the child as close as is reasonably practical to the local authority area in which it resided up to that point. 40

3 Children in care

- (1) The Secretary of State shall make regulations to establish a process whereby if a child in the care of an authority has made a complaint – 45
- (a) that complaint shall be investigated and determined by an independent body; and

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- (b) a litigation friend independent of Children and Family Court Advisory and Support Service shall be provided for that child.
- (2) Until such time as regulations under subsection (1) come into force any person who has day to day contact with a child in care may apply to be the litigation friend for that child and the court must accept that application if the person applying demonstrates that there is a prima facie case that the child is suffering in the care of the authority, that the attention of the court is needed. 5
- (3) The criminal records of any child in care shall contain only information that would have been included had that child not been in care.
- (4) The Secretary of State shall make regulations to ensure that the criminal record of any child in care shall only contain information about offences and behaviour that a reasonable person would expect to be recorded in the criminal record had that child not been in care. 10
- (5) In section 4 of the Equality Act 2010 after “age;” insert “being currently subject to or having been subject to a care order at any point during childhood”. 15
- (6) Regulations made under this section shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- 4 Amendment to the Adoption and Children Act 2002**
- After section 52(1) of the 2002 Act there shall be inserted – 20
- “(1A) Where a judge is of the opinion that parental consent may be dispensed with pursuant to subsection (1)(b) he must –
- (a) in his judgement explain how he has considered the requirement of section 1(4) of this Act; and
- (b) then only make an order placing a child in the care of a local authority after considering whether it is possible and in the interest of the welfare of the child to place the child with one of his relatives.” 25
- 5 Children and parents: duties of local authorities and other bodies**
- (1) When a local authority or other body carries out any functions or makes any decisions in connection with the upbringing of a child, the child’s welfare shall be the paramount consideration. 30
- (2) In respect of subsection (1), the local authority or other body must act on the presumption that the child’s welfare is best served through having access to and contact with both parents and grandparents sufficient to enable him to have a meaningful relationship with both parents and grandparents unless in the opinion of the court such contact is not in the interests of the welfare of the child and that information about the child should be provided to both parents. 35
- 6 Rights of children to their records**
- Upon attaining the age of 16 a child shall have a right to copies of all records held by any local authority or NHS body relating to their care. 40

PART 2

ADMINISTRATION OF JUSTICE

7 Right to report wrongdoing

- (1) It shall not be contempt of court (notwithstanding any court order or statute) for any person – 5
- (a) to report wrongdoing to a law enforcement agency or regulator, Member of Parliament or other elected representative; and
- (b) for such a regulator, law enforcement agency, Member of Parliament or other elected representative to investigate the allegation of wrongdoing. 10
- (2) It shall be an offence to threaten any person in order to prevent them reporting a wrongdoing pursuant to subsection (1).
- (3) A person guilty of an offence under this section shall be liable – 15
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both; or
- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

8 Matters relating to court proceedings

- (1) The common law offence of scandalising the court is hereby abolished.
- (2) A list of persons imprisoned for contempt of court, the term of imprisonment and the reasons that they are imprisoned must be published by the courts on the internet. 20
- (3) Where any person has been granted leave to bring a judicial review the Court shall make an order restricting the costs for which the applicant may be liable unless there are compelling reasons as to why this should not happen. 25
- (4) Where the court is hearing a case relating to an extradition order and the person subject to the order – 30
- (a) is the parent of a child or children habitually resident in the United Kingdom;
- (b) is themselves habitually resident in the United Kingdom;
- (c) was in the United Kingdom when the offence or alleged offence was committed; and
- (d) could reasonably be prosecuted in the United Kingdom,
- the court must take into account when reaching its decision any statement made to it by or on behalf of the child or children described under (a) about the impact on them of extraditing the person. 35

9 The Official Solicitor

- (1) The Secretary of State shall make regulations to establish a process whereby the work of the Official Solicitor is subject to wider scrutiny.
- (2) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament. 40

10 Recording of hearings

- (1) A person who is a party to a hearing in court may record such a hearing for the purposes of producing a transcript of the hearing.
- (2) The same rules of confidentiality shall apply to any such recording or transcript as apply to a transcript that would have been provided by the court. 5

11 Right to assert litigation capacity

Any person who has been deemed to lack capacity to bring or conduct any proceedings may at any time appeal against that decision, or make an application to assert capacity presently, and shall have standing to conduct the proceedings in that matter themselves and without their litigation friend. 10

12 Ambit of reasonableness in capacity

Any person who proposes to make a decision that is within the ambit of possible reasonable choices shall be deemed to have capacity for the purposes of that decision notwithstanding that they would otherwise be found incapacitous, unless it would on balance of probabilities cause them serious harm, whether immediately or in the future. 15

13 Parole: special consideration for those maintaining innocence

- (1) The Secretary of State shall within six months of this section coming into force lay a report before both Houses of Parliament setting out –
 - (a) the number of persons who are imprisoned and have exceeded the tariff ordered by the court but who have not admitted guilt and have been refused parole as a result; 20
 - (b) proposals to appoint an independent assessor to determine the reasons for an individual not admitting their guilt;
 - (c) proposals to require parole boards to take account of the reports of the independent assessor when reaching their decisions; and 25
 - (d) proposals to require the probation service to provide special support to prisoners released after their conviction or convictions have been overturned on appeal.
- (2) The Secretary of State shall lay further reports before both Houses of Parliament on an annual basis setting out the information described in subsection (1)(a). 30

14 Criminal Cases Review Commission: extension of powers to obtain documents and other material

- (1) After section 18 of the Criminal Appeal Act 1995 insert – 35
“18A Obtaining documents etc from those not serving in public bodies
 - (1) The Crown Court may, on an application by the Commission, order a person to give the Commission access to a document or other material that is in the person’s possession or control.
 - (2) The court may make an order only if it thinks that the document or other material may assist the Commission in the exercise of any of their functions. 40

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- (3) An order under this section may include provision about the manner in which access must be given, including provision allowing the Commission to take away a document or other material or make copies.
- (4) An order under this section may direct the person against whom it is made not to destroy, damage or alter the document or other material before the direction is withdrawn by the court. 5
- (5) An order under this section may not be made against a person on whom the Commission could impose a requirement under section 17 (person serving in a public body).
- (6) Subsections (3) and (4) of section 17 apply for the purposes of this section as they apply for the purposes of that section.” 10
- (2) At the end of the heading to section 17 of that Act insert “from those serving in public bodies”.
- (3) In section 25 of that Act (restrictions on onward disclosure without consent) – 15
- (a) in subsection (1) after “requirement is imposed under section 17” insert “or by an order under section 18A”;
- (b) in subsection (2)(a) after “section 17” insert “or 18A”.

PART 3

CONSUMER COMPLAINTS IN MARKETS FOR PUBLIC SERVICES

- 15 Super-complaints about public services** 20
- (1) Section 11 of the Enterprise Act 2002 (Super complaints to OFT) is amended as follows.
- (2) After subsection (1) insert-
- “(1A) This section also applies where a designated consumer body makes a complaint to the relevant regulator that any feature, or combination of features, of a market in the United Kingdom for public services is or appears to be significantly harming the interests of consumers. 25
- (1B) Where a complaint is made under subsection (1A), subsections (2) to (8) shall apply as though references to the CMA are references to the relevant regulator. 30
- (1C) Where a complaint could be made under subsections (1) or (1A), it shall be made under subsection (1).
- (1D) Where a complaint does not comply with subsection (1C), subsections (2) to (9) shall not apply.”
- (3) In subsection (9) at end insert- 35
- “public services” means services in relation to any one or more of health care, social care, childcare, education, training and higher education; and
- “relevant regulator” means-
- (a) in relation to health and social care services, the Care Quality Commission; 40

- (b) in relation to childcare, education and training services, the Office for Standards in Education, Children’s Services and Skills; and
- (c) in relation to higher education, the Quality Assurance Agency for Higher Education.”

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PART 4

FREEDOM OF INFORMATION

16 Freedom of information relating to contracts

After section 3 of the Freedom of Information Act 2000 (“Public authorities”) there is inserted-

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“3A Contracts made by public authorities

- (1) Any contract made by a public authority with any person shall be deemed to include the specified disclosure provision.
- (2) Where such a contract is to any extent performed by means of a sub-contract that sub-contract shall be deemed to include the specified disclosure provision.
- (3) In this section the “specified disclosure provision” means a provision stipulating that all information relating to the performance of the contract which is held by-
 - (a) the contractor,
 - (b) a sub-contractor, and
 - (c) any other person on behalf of the contractor or sub-contractoris, notwithstanding any contrary provision of the contract, deemed to be held on behalf of the public authority for the purpose of this Act or the Environmental Information Regulations 2004.”

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17 Persons holding information on behalf of a public authority

- (1) After section 55 of the Freedom of Information Act 2000 (“Powers of entry and inspection”) there is inserted-

“55A Powers in relation to persons holding information on behalf of a public authority

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- (1) Where an application to the Information Commissioner has been made under section 50 in relation to information which is held by any person on behalf of a public authority the Commissioner shall have the same powers -
 - (a) to require that person to furnish information to him by means of an information notice under section 51, and
 - (b) to obtain and execute a warrant under section 55 in relation to that person as he does in relation to the public authority.”
- (2) After subsection (2) of section 77 of the Freedom of Information Act (“Offence

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of altering etc. records with the intent to prevent disclosure“) there is inserted-

“(2A) Subsection (1) applies to any person holding information on behalf of the public authority and to any employee of that person and to any person subject to the direction of that person.”

PART 5

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GENERAL

18 Citation, commencement and extent

- (1) This Act may be referred to as the Transparency and Accountability Act 2014.
- (2) This Act comes into force two months after it is passed.
- (3) This Act extends to England and Wales only.

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To make provision regarding arrangements for children involved in court proceedings; to make provision about the transparency, administration and accountability of courts and case conferences; to require the Secretary of State to report to Parliament annually on the number of prisoners who have exceeded their tariff and have not been released because they do not admit guilt; to extend the Criminal Cases Review Commission's powers to obtain information; to make provision about consumer complaints in markets for public services; to amend certain sections of the Freedom of Information Act 2000 relating to contracts; and for connected purposes.

*Presented by
John Hemming*

*Ordered, by The House of Commons,
to be Printed, 2nd July 2014.*

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PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED
Printed in the United Kingdom by
The Stationery Office Limited
£x.xx