

Explanatory Memorandum to the Children Act 1989 Contact Activity Directions and Conditions (Financial Assistance) (Wales) Regulations 2008

This Explanatory Memorandum has been prepared by the Department for Children's Health and Social Services and is laid before the National Assembly for Wales in accordance with Standing Order 24.1

Description

These Regulations enable Welsh Ministers to make payments to assist individuals meet the cost of contact activity ordered or directed by the Courts in respect of private child care proceedings. Under new arrangements parents undergoing separation 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. The changes are part of wider measures being led by the Ministry of Justice to modify the Family Proceedings Courts (Children Act 1989) Rules 1991.

Matters of Special Interest to the Subordinate Legislation Committee

None

Legislative Background

This Statutory Instrument is made under section 11F (3) to (7) of the Children Act 1989, as amended by Part 1 of the Children and Adoption Act 2006.

The functions of the National Assembly for Wales were transferred to Welsh Ministers by virtue of paragraph 30 of Schedule 11 of the Government of Wales Act 2006.

These Regulations follow the negative resolution procedure.

Purpose and Intended Effect

When parents separate they are sometimes unable to make amicable arrangements that provide continuing contact between both parents and their children. The Children and Adoption Act 2006 gives the Courts new powers to maintain and promote contact and to enforce contact orders made under Section 8 of the Children Act 1989 by enabling the courts to:

- direct parties in a contact case to undertake a contact activity such as attending information sessions, programmes, classes and counselling (including programme to address violent behaviour) or guidance sessions designed to deal with contact disputes; and
- attach conditions to contact orders which may require attendance at a given class, session or programme.

The Welsh Assembly Government is firmly committed to improving the outcomes for children and believes that every child has the right to grow up in a safe home which supports their physical and emotional well-being. To ensure that the requirement to pay for contact activities is not a barrier to improving contact arrangements for the child, we propose to provide financial assistance to those in greatest financial need.

These Regulations will enable Welsh Ministers to provide financial assistance to those in receipt of legal aid to fund access to contact activities in Wales (ordered or directed by the Courts) that will improve contact between children and their parents, where it is in the best interest of the child to do so. Contact activity services provided in Wales will be commissioned and managed through CAF/CASS CYMRU. Levels of subsidy paid will be managed through fixed price contractual arrangements.

Individuals not in receipt of legal aid will, with minor exceptions, be expected to meet the costs of the contact activity themselves. The regulations provide the Welsh Assembly Government with the discretion to extend its subsidy of contact activity to individuals where it may be demonstrated that it would present an undue financial hardship to the individual in meeting the full cost of the activity. These will be exceptional circumstances and considered on a case basis.

Implementation

Parallel regulations will come into force in England on 8 December in line with the commencement of the new Court Rules and regulations. Had regulations in Wales not have been made, there would be an inequality of treatment of those subject to court proceedings in England and Wales.

Regulatory Impact Assessment

Options

Do Nothing – by not making these regulations parents in receipt of legal aid will be expected to meet the full costs of undertaking contact activities leading to inequitable treatment of individuals before the Courts in Wales.

Make the legislation – 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 and ensures parity of treatment across England and Wales.

Benefits

Making these regulations will enable children subject to contact order applications to continue to have the benefit of a secure bond with their parents which will strongly influence children's educational attainment, behaviour and mental health.

When parental separation goes badly and in particular, where children are drawn into parental conflict, then 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 also supports early intervention to avoid problems escalating that may require more intense costly intervention service from statutory agencies.

The legal and court processes that resolve contact disputes can be slow and adversarial and even contribute to a deterioration of the situation between separating couples. These processes can also result in the voice of the child involved being overlooked. The judiciary and others have pressed for wider, more flexible ways to facilitate and enforce compliance with contact orders.

Costs

The Regulatory Impact Assessment prepared during scrutiny of the Bill identified 60% of applications for contact orders are eligible for legal aid, equating to an estimated £200,000 annually for Wales. The Department for Children Schools and Families has transferred £68,000 to meet the costs of subsidising contact activities for the remaining part of the 2008/09 financial year.

These costs have been identified as a statutory contractual commitment to be met from within the CAFCASS CYMRU BEL for 2009/10 onwards.

Competition Assessment

These regulations have been scored against the competition filter test which indicated that there should be no detrimental effect on competition.

The provision of contact activities is a new service which will be delivered by a range of private and voluntary sector providers across Wales identified through a formal open tender submission and evaluation exercise.

Consultation

A consultation on the principles of the regulations was undertaken between 13 June and 15 August 2008 and simultaneously published on the consultation pages of the Assembly Government's website. Consultees included Designated Family Judges, Her Majesty's Court Service in Wales, the President of the Family Division and Head of Family Justice, Voluntary Sector Organisations working with children and families, Children's Commissioner for Wales, Local Authorities in Wales, Welsh Local Government Association, Welsh Assembly Government Police Liaison Office, Youth Offending Teams, CAFCASS CYMRU, Children and Young People's Partnerships, Local Safeguarding Children Boards and potential providers of contact activities in Wales.

Fourteen responses were received which supported the proposals to provide financial assistance to those in greatest need. A summary of the responses is being made available on the Welsh Assembly Government website.

Post Implementation Review

Implementation of the Children and Adoption Act is managed by a cross-Whitehall group comprising Ministry of Justice, Department for Children Schools and Families, National Offender Management Service, Legal Services Commission and Welsh Assembly Government including CAFCASS CYMRU. As a new service available to the courts, the delivery and benefit of contact activities will be monitored of by the national implementation group. CAFCASS CYMRU will also be monitoring implementation as part of their responsibilities for managing the contract with providers delivering contact activities in Wales.

Summary

These regulations will provide financial support to those in receipt of legal aid who have been ordered or directed by the courts to undertake contact activities that maintain or improve contact with between both parents and their children following separation.