

## Children and Families Bill

House of Commons Second Reading – Monday 25 February 2013

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### Key Points

The Law Society welcomes the Children and Families Bill. The Bill represents the culmination of a great deal of work by everyone with a part to play in delivering family justice, and the Society supports and welcomes most of its provisions. This briefing has been prepared by the Society's Family and Employment Law Committees, whose comments are made based on experience and expertise in these fields of law .

- **Part 1: Adoption and children looked after by local authorities** – The Society supports the clauses taking forward the recommendations outlined in '*Fostering for Adoption*', but is unconvinced that the removal of the requirement to give due consideration to ethnicity etc. will have any real impact on delays or rates of adoption.
- **Part 2: Family justice** – The Society welcomes much of the family justice provisions in the Bill, which represent the culmination of a substantial period of work by all involved in the system. There are a number of improvements to the drafting which should be made, which the Society will brief comprehensively on at the Committee Stage.
- **Part 3: Children and young people in England with Special Educational Needs** – The Bill's provisions in relation to SEN children and young people are largely welcome.
- **Part 6: Statutory rights to leave and pay** - Shared parental leave is a step in the right direction, but pay inequality remains a major obstacle to women achieving equality in the workforce.
- **Part 8: Right to request flexible working** – The extension of the right to request flexible working is welcome, but the Society has concerns about plans for its practical operation.

### Part 1: Adoption and children looked after by local authorities

#### *Clause 1: Placement of looked after children with prospective adopters*

1. Clause 1 would impose a duty on local authorities to, when considering placing a child for adoption, consider placing the child in a 'fostering for adoption' placement.
2. The proposal is welcome. These children are vulnerable members of society, and the Society supports measures to minimise disruption to young lives by reducing the number of placements that children experience while in care. Evidence from Coram and the British Adoption and Fostering Agency estimates that the new duty will reduce the time children have to wait for an adoptive placement by approximately two months. The Society therefore supports the clauses taking forward the recommendations outlined in '*Fostering for Adoption*'.

#### *Clause 2: Repeal of requirement to give due consideration to ethnicity: England*

3. Clause 2 would remove the requirement on adoption agencies to give due consideration to a child's religious persuasion, racial origin and cultural and linguistic background when making an adoption

place. The argument that the repeal of this requirement will reduce delays and improve adoption rates is unconvincing. Guidance has already been amended to make it clear that children should not be denied adoption because a precise ethnic match cannot be found.

## **Part 2: Family Justice**

### *Clause 10: Family mediation information and assessment meetings*

4. Clause 10 would impose a requirement for a person to attend a family mediation information and assessment meeting (MIAM) before making a relevant family application. The Society welcomes the strengthening of this clause from the draft bill, via a change in terminology from a weak 'expects' of the Pre-Application Protocol into a firm 'must' as regards attendance at a MIAM.
5. For the sake of clarity, and with the rise of self-representing parties in mind, the Society would support a change in terminology. Assessment meetings should not be limited to, or perceived to be only about, mediation as an alternative to court. There are other forms of dispute resolution available, and there is a need to raise public awareness of the options: one-size does not fit all.

### *Clause 11: Welfare of the child: parental involvement*

6. Clause 11 proposes a duty for courts to take into account that both parents, after separation, should continue to be involved in a child's life provided that is consistent with the child's welfare. The removal of the term 'shared parenting' is welcome, as is the confirmation that the purpose is not to promote the equal division of a child's time between separated parents. Nevertheless, there are risks with introducing a legislative presumption of 'parental involvement' into legislation. There is no evidence that current legislation favours one type of parenting arrangement over another, or one parent over another. The primary focus must remain the rights and welfare of the child.

### *Clause 12: Child arrangements orders*

7. Clause 12 would introduce a new child arrangements order to replace existing residence and contact orders. The Society supports the introduction of child arrangements orders, and the removal of the emotive labels of 'contact' and 'residence'. Although there are limits to what changes in nomenclature can achieve – most people will still refer to 'custody' - at least the new terminology makes it clear that the focus is the child.
8. For those parents who go to court, child arrangements orders could help them to agree practical arrangements for the child. The new orders will need to be sufficiently robust and precise to ensure that they are enforceable, including within foreign jurisdictions. It is likely that the Society will be supporting an amendment specifically to address enforcement across other jurisdictions.

### *Clause 14: Care, supervision and other family proceedings: time limits and timetables*

9. The Society supports the aim of reducing the length of care cases. There is a balance to be struck between investigating every available option for the care of a child, proportionality and the damage that is caused by delay.

### *Clause 15: Care plans*

10. Clause 15 would make it explicit in law that, when a court considers a care plan, it should focus on those issues that are essential to its decision about whether to make a care order. The Society agrees with the policy intention to focus judicial scrutiny upon the key components of a care plan, but in common with many others believes that it is a mistake to limit the court's consideration to 'permanency'. On the face of it, this would be contrary to the welfare principle and specifically the court's duty to consider the welfare checklist in section 1(3) of the Children Act.

### **Part 3: Children and young people in England with Special Educational Needs**

11. Part 3 of the Bill makes new provision for identifying children and young people with special educational needs (SEN), assessing their needs and making provision for them. The Society welcomes many of the provisions in the Bill, in particular:
  - 11.1. The greater specificity of Education, Health and Care Plans (EHCPs) and their extension to young people undertaking apprenticeships;
  - 11.2. Proposals for the code of practice to be subject to parliamentary scrutiny; and
  - 11.3. The removal of the requirement for compulsory mediation.
12. However, the Society is disappointed that the Government has not followed the recommendation of the Education Select Committee that EHCPs should be extended to disabled children and young people who do not have SEN. It is also a matter of concern that the 'local offer' (local authorities' published details of support available to children and young people with SEN in their area) will be neither enforceable nor measurable against a national standard.

### **Part 6: Statutory rights to leave and pay**

13. Part 6 implements a system of flexible parental leave. Specifically, Clause 87 would allow for parents to share parental leave when their baby is born. The proposals are welcome but these measures alone will not achieve a culture of shared parenting that is readily taken up by employees and supported by employers. Unless there is greater parental pay it is unlikely that families will be able to afford to take their full entitlement to leave, whether shared or not. Furthermore, disparities in pay between mothers and fathers may make it difficult for couples to share parental leave.
14. Entitlement to parental leave should not be co-dependent on each other's rights and entitlements. For example, as presently drafted, a couple where only one parent is working will be unable to take advantage of new rights to shared leave. As a matter of principle, shared parental leave should be a stand alone right.

### **Part 8: Right to request flexible working**

#### *Clause 101: Removal of requirement to be a carer*

15. Clause 101 extends the right to request flexible working hours, currently available only to parents with a child under 17 (or 18 if the child is disabled), to all employees. The Society welcomes this extension, which reflects a generational shift towards a better work/life balance for both genders, recognises the caring responsibilities and physical constraints that many people have to deal with, and facilitates religious observance. However, it is unclear why the qualifying period of 26-weeks has been retained before the right to request flexible working applies: it should be available from day one.

#### *Clause 102: Dealing with applications*

16. Clause 102 would remove the current statutory procedure employers must follow when dealing with a request for flexible working and replaces it with a duty that employers consider such requests 'in a reasonable manner'. The Society does not support this proposal. Fostering the flexible working culture envisaged by the Bill requires certainty as to rights and obligations. This is best achieved by retaining the formality of the present approach, which creates the opportunity and sets the agenda for a discussion on the ways in which flexible working could be mutually advantageous.

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