

Family Justice (Transparency, Accountability and Cost of Living) Bill

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Make provision regarding arrangements for children involved in court cases; to make provision about the transparency, administration and accountability of courts and case conferences; to require the promotion of measures to assist families and such other persons as may be specified to reduce the cost of living through lower fuel bills; 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

TRANSPARENCY AND ACCOUNTABILITY

1 Family group conferences

- (1) Where a Children’s Services Authority is considering care proceedings relating to any child that in its opinion is at risk, or is about to become “looked after” it must designate a person (“the referrer”), subject to the provisos specified in subsection (6), to offer the family a family group conference. 5
- (2) A family that has accepted an offer pursuant to subsection (1) shall have 6 weeks to propose a Family Plan.
- (3) The Family Plan shall be agreed in principle and implemented by the referrer unless in his opinion it would put the child at risk of significant harm, in which case the referrer shall state why he has reached that opinion and try to reach agreement with the family on an alternative plan. 10
- (4) Any child or his family may appeal within 3 months against any decision made by a referrer pursuant to subsection (3) to the relevant scrutiny or appeal committee of the Children’s Services Authority. 15
- (5) 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. 20

- (6) The provisos to which subsection (1) refers are –
- (a) that this section shall not apply in the event of emergency action being required to protect a child; and
 - (b) that there shall be no obligation to invite a member of the child’s wider family who –
 - (i) in the event of a complaint from another family member; and
 - (ii) in the opinion of the co-ordinator, may intimidate any other person at the conference.

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 a “Friend” and a “McKenzie Friend” present and any such persons shall be subject to the same rules of confidentiality as the party to the proceedings. 10
- (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 – 15
- (a) any publication of the research removes all identifying details and any other details that may identify any person; and 20
 - (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.
- (3) Grandparents or siblings of parents, or adult siblings of the child concerned who are not parties to a case, shall – 25
- (a) be able to participate in that part of any proceedings which involves considering whether or not children should be placed with them; and
 - (b) 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 his 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) In Section 22C(7)(c) of the Children Act 1989 the words “that it is not reasonably practicable” are hereby deleted and replaced with “it is not in the interest of the welfare of the child”.

3 Children in care 40

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

- (b) a litigation friend, other than someone from an organisation that has previously employed a guardian *ad litem* for this child in previous proceedings, shall be appointed.
 - (2) Until such time as the process required pursuant to subsection (1) is established 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 and the attention of the court is needed and it is the wish of the child to have such person as a litigation friend. 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. 10
 - (4) Being currently or having been subject to a care order at any point in childhood shall be a protected characteristic for the purposes of the Equality Act 2010.
- 4 Amendment to the Adoption and Children Act 2002**
- After section 52(1) of the 2002 Act there shall be inserted – 15
- “(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.” 20
- 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. 25
 - (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. 30
- 6 Interpretation of this Part**
- In this Part – 35
- “a family group conference” means a family-led, decision-making meeting, convened by an independent co-ordinator, who is a person with at least three years experience in this field, 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; 40
 - “a family plan” means a plan made by a family group conference;
 - “a Friend” means a person who will accompany and support the party in the case;

“a looked after child” means a child looked after by the local authority;
 “a McKenzie Friend” means a person who may not be a lawyer but can advise or assist or advocate on behalf of the party in the case;
 “serious harm” includes psychological, emotional and physical harm.

PART 2

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OTHER PROVISIONS RELATING TO THE 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—
 - (a) to report wrongdoing to a law enforcement agency or regulator, Member of Parliament or other elected official; and
 - (b) for such a regulator, law enforcement agency, Member of Parliament or other elected official to investigate the allegation of wrongdoing.
- (2) It shall be an offence to threaten any person in order to prevent them reporting a wrongdoing pursuant to subsection (1).

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.
- (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.

9 **The Official Solicitor**

- (1) The Secretary of State must make regulations to establish a process and procedure 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.

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.

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.

12 Ambit of reasonableness in capacity

Any person who, in the assessment of their capacity to make a decision, 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. 5

PART 3

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COST OF LIVING AND MEASURES TO ACHIEVE LOWER FUEL BILLS

13 Strategy

- (1) The Secretary of State must promote access to measures to achieve lower bills and more efficient use of fuels by drawing up a strategy (“the strategy”) to achieve significant increases in the installation of domestic energy efficiency measures and microgeneration technologies, as specified in the Climate Change and Sustainable Energy Act 2006 but including passive flue gas technology, by 2015, 2020 and 2025. 15
- (2) The strategy must –
 - (a) include steps to ensure that all new homes comply with Level 6 of the Code for Sustainable Homes by 2016; 20
 - (b) set out a commitment to use such regulations as he considers necessary, appropriate and cost effective by 2020 to require any replacement heating system to achieve a step change in energy efficiency or a reduction in energy costs provided that he is satisfied that it is cost effective; and available in sufficient volumes to service the likely size of the market; and can be installed and maintained by an appropriately trained and competent workforce; 25
 - (c) ensure that microgeneration measures have access to green deal finance and to Feed in Tariffs or Renewable Heat Incentive funding as the case may be. 30
- (3) Before publishing the strategy the Secretary of State must –
 - (a) consult such persons as he considers appropriate; and
 - (b) in particular consult and as far as possible reach agreement with stakeholders as to what is to be deemed as significant pursuant to subsection (1). 35
- (4) The Secretary of State must use all reasonable endeavours to implement the strategy.

14 Fuel poverty

- (1) The Secretary of State must, not later than 12 months after the passing of this Act, produce a costed road map to end fuel poverty, subject to the proviso in subsection 3, by a date to be specified in the road map. 40

- (2) The Secretary of State must ensure that the road map is subject to a decision of the House of Commons, and thereafter implement the road map.
- (3) The proviso referred to in subsection (1) is that the Secretary of State shall not be under a duty to end fuel poverty in properties where the occupiers have declined to have measures installed or that are of such a size that they cannot be properly insulated.

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PART 4

GENERAL

15 Short title, commencement and extent

- (1) This Act may be cited as the Family Justice (Transparency, Accountability and Cost of Living) Act 2012.
- (2) This Act comes into force at the end of the period of 6 months beginning with the day on which it is passed.
- (3) This Act extends to England and Wales only.

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Presented by John Hemming.

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