



Edward Timpson MP

Parliamentary Under Secretary of State for Children and Families

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Rt Hon Sir Alan Beith MP
Chair
Justice Select Committee
House of Commons
London
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1 November 2012

Dear Sir Alan,

Draft clause on shared parenting – Children and Families Bill

I am now in a position to send you the draft clause on shared parenting that we propose to include in the package of children and families legislation announced in the Queen's speech. This letter also serves as the means to publish the clause, and will be placed on the DfE website.

This clause is the final part of the package of family justice clauses that we are publishing for pre legislative scrutiny. They complement the other private family law provisions to encourage dispute resolution away from court wherever possible, and introduce child arrangements orders. In addition, we are putting forward measures to streamline the court process for divorce or dissolution of a civil partnership. The Committee has already been supplied with the proposed clauses for public family law which will help to reduce delay and remove duplication and unnecessary administrative burdens.

The annexes to this letter include the draft clause and Explanatory Notes (including a process chart and example scenarios to illustrate how the clause would operate) and a Keeling Schedule showing how the revised legislation will look.

Our starting point in drafting this legislation is based on two principles. Firstly, that the safety and welfare of children is paramount. Secondly, that mothers and fathers should have the opportunity to play a positive role in their children's lives, when it is safe and in their best interests.

We want most parents to resolve disputes out of court, wherever possible, which is why we are reforming and investing in family mediation services and other support. But we must improve the system where court cannot be avoided or where disputes are intractable and complex.

I know from my own experience practising as a family lawyer, that many separating couples feel the system is far too adversarial, with courts seen as creating “winners” and “losers”. It is vital that both mothers and fathers feel confident that the court will consider fully the benefits of their involvement. We believe that the absence of an explicit reference to this consideration in the Children Act 1989 has contributed to a perception that the law does not fully recognise the important role that both parents can play in a child’s life. We remain convinced that a change to the law is needed to help restore confidence in the family court system.

We have concluded that this is best achieved by introducing a presumption in law that a child’s welfare is furthered by the involvement of both parents – where that is safe and in the child’s best interests. We have taken the decision to proceed with this approach after a detailed analysis of the consultation responses. Strong views were expressed from both sides of the debate, but over half of the respondents supported the Government’s view that a presumption is the right approach.

This proposed legislative change does not give or imply the creation of any rights to equal time, or that there is any prescribed notion of how much time is appropriate. Courts will continue to make decisions based on children’s best interests.

Concerns about the potential for introducing tension between welfare considerations and the benefits of parental involvement, and concerns about ‘rights’ to time, were widely raised in the consultation responses. These points were often raised in the context of the Australian shared parenting legislation. The structure and wording of the clause leave no room for legal interpretation other than that the welfare of the child overrides all other considerations, and include no reference to time. We have also acted on feedback from the consultation by amending the wording to strengthen safeguards for children. The Explanatory Notes at Annex B describe how the clauses are designed to work.

I am aware that the time taken up by the consultation exercise and subsequent analysis work has placed additional pressures on the Committee, and I am very grateful for your co-operation in agreeing to consider this issue within a shorter timescale.

Yours sincerely,
Edward

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