EXPLANATORY MEMORANDUM TO

THE CHILD ARRANGEMENTS ORDER (CONSEQUENTIAL AMENDMENTS TO SUBORDINATE LEGISLATION) ORDER 2014

2014 No. 852

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This order makes amendments to secondary legislation in consequence of section 12 of the Children and Families Act 2014, which removes the definition of "residence order" and "contact order" in section 8(1) of the Children Act 1989 and introduces a new order, the "child arrangements order".

3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Section 12 of the Children and Families Act 2014 replaces "residence orders" and "contact orders" in section 8(1) of the Children Act 1989 with a new order, the "child arrangements order". The child arrangements order is defined as an "order regulating arrangements relating to any of the following—

(a)with whom a child is to live, spend time or otherwise have contact, and
(b)when a child is to live, spend time or otherwise have contact with any person"

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 In 2010, the Government commissioned an independent review of the family justice system. The panel's final report, which was published in November 2011, recommended the introduction of a single order to replace contact and residence orders, with the aim of encouraging parents to focus on the needs of their child rather than their own perceived entitlements. The Government accepted this recommendation in its response to the review, published in February 2012. The Children and Families Act 2014 includes provision to achieve this; section 12 introduces a child arrangements order that covers with whom the child is to live, spend time or otherwise have contact (and when they should do this).

7.2 The change itself is straightforward, but it gives rise to a number of consequential amendments – both to primary and secondary legislation. The majority of these amendments simply replace the terms "residence order" or "contact order" with "child arrangements order". In many cases, the distinction between contact and residence remains, but the language now reflects that the order in question will be a specific type of child arrangements order.

7.3 Whilst the name of the order in question has changed, the rights that flow from the order remain. If, for example, the order provides that a child shall live with a particular person, that person (or others seeking confirmation that the child lives with that person), should be able to rely on that child arrangements order as confirmation that the child should be living with that person, in the same way as is currently the case in relation to a residence order.

8. Consultation outcome

8.1 The family justice review panel consulted on its draft recommendations. No formal consultation has taken place on the consequential amendments included in this order. However, the changes have been discussed with and agreed by relevant government departments and the devolved administrations.

9. Guidance

9.1 No guidance is being issued on the amendments included in this order.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil. The introduction of the child arrangements order relates only to private family law proceedings.

10.2 The impact on the public sector is nil. This order simply ensures that references to contact orders and residence orders are amended as appropriate to reflect the introduction of the child arrangements order.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 The Government will review the impact of the Children and Families Act 2014 as a whole as part of its commitment to conduct post-legislative scrutiny on new legislation. No specific monitoring or review processes are planned for the amendments made by this order, as they are purely consequential in nature and reflect the change in terminology arising from the introduction of the child arrangements order.

13. Contact

Kate Lyons at the Department for Education, tel: 0207 783 8085 or email: kate.lyons@education.gsi.gov.uk can answer any queries regarding the instrument.