

**RESPONSE TO CONSULTATION  
ON AMENDMENTS TO THE CHILDREN ACT 1989 VIA  
THE ADOPTION AND CHILDREN ACT 2002**

- 1 British Association for Adoption and Fostering (BAAF) is pleased to have the opportunity to respond to this consultation. BAAF's Legal Group Advisory Committee, comprising lawyers in local government and private practice, and children's guardians, has been able to assist with formulating the response.
  
- 2 **Parental responsibility for step-parents (Section 112 of 2002 Act):**
  - a) The amendments to the regulations appear to contain all that is required, but there is an error in that paragraph 3 refers to 'Rule 3(2)' when presumably this should be 'Regulation 3(2)'.
  
  - b) The form itself and accompanying notes are not at all user-friendly, particularly bearing in mind that an application to end the agreement could be made by a child with the leave of the court. It would be helpful, for example, to provide information about how long it might take for the agreement to be recorded at the PRFD and when those making the agreement can expect to receive the stamped copies.  
In the explanatory notes regarding documentation, the information given here is somewhat muddled. The father would be able to establish the fact that he has parental responsibility by producing a marriage certificate showing that he was married to the child's mother at the time of the child's birth or conception. Where the child is an adopted child, the certificate required will, of course, be the certified copy of the entry in the Adopted Children's Register. Bearing in mind that there may be three signatories to the agreement, it may be helpful to consider further guidance about whose responsibility it should be to copy the agreement and send copies to the principal registry. (We assume that the spelling of 'principle') will be corrected!  
At the end of the explanatory notes under 'ending the agreement' it needs to be made clear that it will cease to have effect if the child is subsequently adopted.

### 3 Special Guardianship

- a) **The supplemental form (form C13A).** Under heading 2 'Notification to the local authority', it should be made clear which local authority is the one to whom notice must have been given. (If the child is looked after by a local authority, that local authority, and otherwise the local authority for the area in which the applicant is ordinarily resident.)  
Under heading 4, 'Your plans for the children', it would be helpful to indicate current arrangements for contact, whether or not these are the result of a court order.
- b) **The local authority report to the court (paragraph 2.5 of the consultation paper).** We regret that we consider it quite unrealistic to expect that the local authority report will, in many or most cases, be ready to be filed with the application even if three months' notice has been given. In any event, it is more satisfactory for the local authority to file the report than for the applicants to do so. In reality the local authority will be likely to give greater priority to reporting in those cases where the child is already looked after and, as has been shown to be the case with step-parent adoption applications, it will probably be necessary for the Special Guardianship order application to be filed and for the court to give directions to the local authority to file its report. It would be appropriate to set timescales for this and we would suggest that specific discussion is held with the Association of Directors of Social Services about what would be realistic here.
- c) **Service on the local authority.** It needs to be absolutely clear that, where the child is looked after by a local authority, it is that local authority that must be a respondent to the application. We would suggest that the wording in paragraph 10 to Rule 4.14 under section 7, 'the welfare officer or children and family reporter' should be amended to 'CAFCASS officer'.
- d) **Allocation of proceedings order.** Any application for variation or discharge of a Special Guardianship order should be made to the court which made the order.

- e) **Representation of children.** We consider that it is essential that a CAFCASS officer be appointed in any case where the local authority preparing the report indicates opposition to the making of the Special Guardianship order.

Paragraph 2.9 of the consultation paper makes no reference to the fact that, in cases where the making of a Special Guardianship order would have the effect of discharging a care order, the application will be specified proceedings under The Children Act. Where the child is looked after by a local authority but not in care, and the local authority supports the making of the special guardianship order, it will be important for the court to consider inviting an independent report from a CAFCASS officer, since it may otherwise not have the benefit of any independent consideration of the child's welfare.

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29 October 2004