RESEARCH PAPER 00/35
24 MARCH 2000

The *Criminal Justice and Court Services Bill*: Children and Family Court Advisory and Support Service, Disqualification from Working with Children, and Truancy

Bill 91 of 1999-2000

This Paper covers the provisions in the Bill that would:

- Create a new Child and Family Court Advisory and Support Service (CAFCASS), which would unify the existing Family Court Welfare Service, the Guardian ad Litem & Reporting Officer Service and the children's work of the Official Solicitor

- Create a new criminal offence relating to working with children while disqualified from doing so or to offering such work to such a person

- Increase the penalty for parents of school truants

Other provisions of the Bill are covered in Research Paper 00/36 and Research Paper 00/37.

Jo Roll; Gillian Allen

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ISSN 1368-8456

Summary of main points

- **CAFCASS**

The Bill would create a new court service to look after the interests of children by amalgamating three existing services (or parts of a service). The new service would combine the work of the existing Family Court Welfare Service provided by the Probation Service, the Guardian ad Litem service provided by local authorities, and the work of the Official Solicitor when acting as a child's solicitor at the request of the High or County Court. This new service, to be known as the Children and Family Court Advisory and Support Service (CAFCASS), would be a Non-Departmental Public Body (NDPB) responsible to, and funded by, the Lord Chancellor.[1] These provisions cover England and Wales.

- **Disqualification from working with children**

The Bill would create new criminal offences for people working with children while disqualified and for people offering such work to someone who was disqualified. Disqualification would apply where the person was on one of the lists of people unsuitable to work with children and where someone was subject to a disqualification order. The penalty for individuals guilty on summary conviction would be imprisonment for up to six months or to a fine not exceeding the statutory maximum or both; on conviction on indictment, it would be imprisonment for a term of up to five years or a fine or both.

The disqualification order is a new provision introduced by the Bill. Where someone commits one of the offences against a child listed in the Bill and a qualifying sentence (12 months or more) or relevant order is imposed, the court would be able to make a disqualification order at the time of sentencing.

These provisions cover England and Wales and clauses 32-33 apply to Northern Ireland as well. There is also provision for extending them in relation to people disqualified under Scottish or Northern Ireland legislation.

- **Truancy**

The Bill would increase the maximum fine payable by parents of a child who fails to attend school regularly from £1,000 to £2,500 and introduces the possibility of a custodial sentence. The use of a custodial sentence is at the discretion of magistrates. This provision applies to England Wales.

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[1] NDPBs are bodies that have a role in the processes of national government, but are not government departments or part of one. Accordingly, they operate to a greater or lesser extent at arm's length from Ministers (Cabinet Office, Public Bodies 1999)

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I Child and Family Court Advisory and Support Service (CAFCASS)

Part I, Chapters II and III, Clauses 11-23 and Schedule 2

A. Development of Government Policy

A review of court services concerned with the interests of children was undertaken by the Government as part of the Comprehensive Spending Review that it set in motion soon after coming to power in 1997. On 16 February 1998, the Government announced that it believed that a new, integrated court welfare service subsuming the work of the three existing services would increase efficiency:

> **Mr. Straw:** As part of the comprehensive spending review, my right hon. and learned Friend the Lord Chancellor, my right hon. Friend the Secretary of State for Health, and my right hon. Friend the Secretary of State for Wales and I are considering the range of services currently provided to the courts on child welfare matters within family law by the Probation Service. Guardian ad Litem and Reporting Officer Service and the Official Solicitor's Department. We believe that a new integrated service subsuming the work of each of the above could provide an improved service to the courts, better safeguard the interests of children, reduce wasteful overlaps and so increase efficiency.
>
> I have therefore agreed with my right hon. Friends that further detailed work involving practitioners and other users of the services should be undertaken to form the basis for public consultation.
>
> The detailed terms of reference for the work are as follows:
>
> To identify the range of welfare services currently provided by the Probation Service, Guardian ad Litem and Reporting Officer Service and the children's work of the Official Solicitor's Department and other agencies in family proceedings, and to consider the scope for improvements to the effectiveness of their work through the creation of a new unified service.
>
> To make proposals on the structure of a new service; to provide preliminary analysis of the estimated costs and benefits as a basis for public consultation; and to consider the implications for any new structure of the Government's plans to establish a Welsh Assembly.[2]

A formal consultation was announced in July 1998:

> **Mr. Straw:** Following my announcement on 16 February 1998, *Official Report*, column *465*, of a review of the scope for improving the effectiveness of the

[2] HC Deb 16 February 1998 c465W

> welfare services currently provided by several agencies in family proceedings through the creation of a new unified service, my noble and learned Friend the Lord Chancellor and my right hon. Friends the Secretaries of State for Health and Wales and I are today publishing a consultation paper seeking wider views on these issues. Copies of the paper are being placed in the Library, are being sent to a wide range of interested bodies and will be gladly sent to individuals on request. The closing date for response is 13 November.[3]

The consultation paper published on the same day as the announcement, *Support Services in Family Proceedings: Future Organisation of Court Welfare Services* sought views on combining current services into a national unified service. It concentrated on structural and organisational issues, including costs and funding. It examined several possible structures, including a regional one, and ways in which both the independence of the service and its accountability to government could be achieved within a new structure.

The document said that existing costs were difficult to calculate but made a rough estimate of £66.5 million in 1997/98 for the three services as a whole. Future costs were more diffcult to estimate as it was possible that additional responsibilities might be given to a unified service. The document did not discuss reductions in the numbers professsional staff and stressed the high quality of the existing service. It did discuss the possibility of efficiency gains in various ways, including reductions in clerical staffing and raising more money through fees, as well as through the pooling of experience and expertise that would result from a unified service.

The consultation document also contained a chapter on representation of children in family court proceedings and the different approaches currently adopted in private family law (for example, when parents divorce) and in public law (for example, when a child is being taken into care). In the former case children are only rarely represented whereas they are represented in the latter.

In July 1999, the Government announced that it would be going ahead with plans for a unified service.

> **Mr. Vaz:** I am pleased to announce that the Lord Chancellor, the Home Secretary, the Secretary of State for Health and the First Secretary for Wales have agreed to set up a new service, when legislative time permits, which will combine the present Family Court Welfare function provided by the Probation Service, the Children's Branch of the Official Solicitor's Department and the Guardian ad Litem and Reporting Officer Service which local authorities currently provide. The Lord Chancellor will take responsibility for the new service, which will be set up as a non-departmental public body. The service will cover England and Wales and will serve the High Court of the Family Division, County Courts including Care Centres and Family Proceedings Courts.

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[3] HC Deb 31 July 1998 c841W

> An inter-departmental project team to set up the new service has been established, which the Lord Chancellor's Department will lead. The project management framework to be adopted will ensure close liaison with the relevant services in creating the new organisation.[4]

A Press Notice issued by the Lord Chancellor's Department on the same day gave more information:

> A single service to look after the interests of children involved in family court proceedings is to be set up, the Government announced today. The new Children and Family Court Advisory Service (CFCAS)[5] will be responsible for advising judges on the most appropriate arrangements for children who are the subject of family court proceedings. Advice will be given on issues such as placing children in local authority care, applications for residence or contact, adoption, disputes about medical treatment and prohibited steps, such as preventing a child being taken abroad.
>
> The new service will combine the family court welfare functions currently provided by the Probation Service, the Children's branch of the Official Solicitor's Department and local authority Guardian ad Litem and Reporting Officer services. Together these services submit nearly 60,000 reports to courts each year.
>
> Although initially the new service will simply replicate those functions currently being provided by the existing services, it is possible that at a later date its remit could be extended to take on additional functions on behalf of children involved in family court proceedings and their families.
>
> Lord Irvine, the Lord Chancellor, Jack Straw, the Home Secretary, Frank Dobson, Secretary of State for Health and Alun Michael, First Minister for Wales, said the Government would at the earliest opportunity bring forward legislation to establish the CFCAS as a non-departmental public body (NDPB) responsible to the Lord Chancellor. Their decision followed an extensive consultation exercise last year.
>
> Lord Irvine said "The new Children and Family Court Advisory Service will bring 2000 caseworkers together. The pooling of their wide range of experience and considerable expertise will be of great benefit to the Family Courts. The new service will have the welfare of children and their families as its core responsibility. And by placing a stronger emphasis on the professional development of the staff, the integrated service will also be in a better position to provide improved safeguards for the interests of children. In short, it will put children first."

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4 HC Deb 27 July 1999 c222W

5 now CAFCASS (Child and Family Court Advisory and Support Service)

> Jack Straw said "I wholeheartedly welcome this initiative which puts the welfare of children firmly at the heart of family court proceedings. The family court welfare work carried out by the Probation Service over the past 40 years has been well regarded. I expect the new service to build on that success and to develop it further."
>
> Frank Dobson said "This is an important opportunity to build on the existing high standards of reporting in family proceedings and to give a fuller voice to children at a critical time in their lives."[6]

The Queen's Speech on 17 November 1999 announced that a Bill dealing with crime and protection of the public would create a single service to look after the interests of children in family court proceedings and on 16 March 2000. The Bill currently before Parliament was published. Second Reading is due 28 March 2000. On the day the Bill was published, Jane Kennedy, Minister at the Lord Chancellor's Department, said:

> The Children and Family Court Advisory and Support Service (CAFCASS) would play an invaluable role in looking after the welfare of children in the justice system.
>
> CAFCASS would pull together 1,800 caseworkers and the service would benefit from a wide range of experience and expertise being shared and unified. This is a tremendous opportunity to put the interests of children first, and to provide judges and courts with professional advice on the sensitive and emotional cases coming before them.[7]

B. Existing Services

Existing services were described in the consultation document, *Support Services in Family Proceedings: Future Organisation of Court Welfare Services* (referred to above). That description is set out below:

> 1.9 The present arrangements summarised below broadly cover four types of situations and are provided by one or more of the current services:

- before proceedings commence, information and conciliation services for parents
- following an application, welfare reports and other assistance to courts concerning children affected by the proceedings;
- in some cases termed "public law" the direct representation of children within the proceedings, and representation of mentally incapacitated parents (within the proceedings) by the Official Solicitor;
- post-court involvement through, for example, a family assistance order;

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6 *Single Service to Safeguard Interests of Children in Family Courts*, Lord Chancellor's Department Press Notice, 27 July 1999

7 *Protecting the Public – Crime Fighting Plans Unveiled*, Home Office Press Notice 16 March 2000

- partnership funding with voluntary organisations for services related to court such as, for example, contact centres and family mediation.

1.10 **Family Court Welfare** forms part of the remit of the probation service. As such, it is delivered through 47 area probation services in England and 7 in Wales under area probation committees. Probation committees are accountable to the Home Secretary for the strategic direction and performance of area services within an overall national policy framework. The statutory functions of probation committees are set out in sections 4 -10 of the Probation Services Act 1993 and in Part III of the Probation Rules 1994. The duties include general functions in relation to probation officers; to children and young persons; provisions of establishments such as hostels and other accommodation; and, the provision of financial assistance. The duties of court welfare officers (CWOs) are set out in the Probation Rules of 1984, as amended in 1991, 1992 and 1993. The primary objective of all family court welfare work undertaken by the probation services is to help the courts in their task of serving the needs of children whose parents are involved in separation or divorce, or whose families are involved in disputes in private law.

The principal tasks of court welfare officers are, at the request of the court:

- the preparation of welfare reports under section 7 of the Children Act 1989; dispute resolution, directed towards achieving agreement out of court;
- supervision of a child under sections 31 and 35 and Schedule 3 of the Children Act 1989;
- providing advice and assistance to any person named in a family assistance order under section 16 of the Children Act 1989;
- attending court hearings if directed to do so;
- acting as guardian ad litem or reporting officer in proceedings under the Adoption Act 1976.

1.11 The present arrangements have developed from the establishment of the Divorce Court Welfare Service in 1959. Following the Matrimonial Causes Act 1967, Probation Committees were required to assign a Court Welfare Officer to every divorce county court. During the 1970s and 1980s there was a significant shift in the service's approach to civil court work away from enquiry and reporting on children, towards conciliation between the divorcing parents, often attempted during the course of the welfare enquiry. However, with the implementation of the Children Act 1989 in 1991, the balance of family court welfare work again adjusted to reflect the principles of the Act and in addition was set within National Standards for family court welfare work (1994).

1.12 Family Court Welfare is a small part of Probation Services' responsibilities; their primary responsibility is public protection. The Probation Service serves the courts and the public by:

- providing reports to the courts;
- supervising offenders in the community;
- working with offenders so that they lead law abiding lives, in a way which minimises the risk to the public;

- safeguarding the welfare of children in family proceedings;
- helping communities prevent crime and reducing its effects on victims.

1.13 Expenditure on FCW work accounts for less than 10% of the total probation service cash limit (and less than 10% of staff resources) although the percentages varies significantly from probation area to area. It is not a 'stand alone' service and although in some cases FCW staff occupy separate buildings, others may share premises and support personnel with staff engaged in criminal justice work. There are nearly 700 court welfare officers of whom just over 70 are designated as senior court welfare officers. Administrative support and clerical staff involved in Family Court Welfare are estimated as about 280 full-time equivalents.

1.14 FCW undertake about 36,100 welfare reports to courts per year (England and Wales 1997); a similar workload to 1996 (36,800). The volume of mediation cases undertaken has reduced steadily since 1994 with 13,800 in 1995; 10,000 in 1996 and a provisional figure of 8,300 for 1997. What are termed non-privileged directions appointments may have replaced some privileged mediation work. The levels were 36,700 in 1995; 42,800 in 1996 and, provisionally, 42,700 for 1997.

Overall, the total of both types of work together rose by 60% between 1992 and 1996. Additionally, the probation service has partnership arrangements in the order of £1m in support of FCW work such as contact centres and out of court mediation.

1.15 **The Office of Official Solicitor** was established in 1875. The Official Solicitor's Office is an Associated Office of the Lord Chancellor's Department. The Official Solicitor's role is to provide confidential advice to civil courts and to represent minors where there are issues of legal or moral complexity central to their welfare. His representation of children role is restricted to the High and County Court levels of the family courts structure. In adoption proceedings he only acts in the High Court. Functions are similar to, but not identical with, those of the panel guardians ad litem. The role of the OS in child related proceedings is to act as the child's solicitor; in the case of adults to instruct a solicitor on behalf of the adult. It is also to give the child or incapacitated parent a voice in the proceedings by making such submissions to the court, having regard to the expressed wishes and views of the child or adult as he thinks consistent with the childor adult's welfare and best interests. The Official Solicitor also undertakes on behalf of the Lord Chancellor the duties of the Central Authority for England and Wales under the Hague and European Conventions concerning international abductions and the enforcement of child custody orders.

1.16 Only a proportion of the work of the Official Solicitor's Office concerns children in family proceedings. Its other functions include the representation of incapacitated adults and children in general civil litigation and persons committed for contempt of court. Judicial and other trusteeships and the administration of estates of deceased persons are further responsibilities. This consultation paper only addresses the future arrangements for the children's welfare side of the Official Solicitor's responsibilities.

1.17 The Office is headed by the Official Solicitor and staffed by civil servants who may have professional legal qualifications or/and some training in aspects of social work such as child protection, child development and the interviewing of children. Family cases are undertaken by 4 lawyers (full-time equivalents) and 57 other staff.

Total cases in hand at the end of March 1997 were 5,201. Of these, 1,336 (26%) were children litigation and 226 (4%) were child abductions.

1.18 **The guardian ad litem and reporting officer (GALRO) service** was established in 1984. Its origins stem in part from the role of the guardian ad litem in post second world war adoption legislation. In public law cases, the need for a guardian ad litem to speak for the child in care proceedings was highlighted by the Field-Fisher Inquiry (1974) which examined the circumstances leading to the death of Maria Colwell. The report stated that "where a local authority is seeking or consenting to a change in status of a child under their care or supervision, it would be of the greatest value for such an independent report always to be available."[8] Independent in that case meant independent of the local authority and of the child's parents. At that time, the arrangements in the juvenile courts dealing with care applications showed that there was sometimes a conflict of interest because a solicitor acting for the parents could not also effectively advocate the child's needs. Instead, to assist juvenile courts, independent social work reports were commissioned by these solicitors and paid for from Legal Aid.

1.19 Some of these difficulties were addressed in the Children Act 1975 which contained regulation making provisions at section 103 to establish GALRO panels. Implementation of the Act was phased from 1976 onwards. Each local authority was placed under a duty to administer a panel of guardians in its area with discretion to set up joint panels between authorities. The arrangements for GALRO panels came into force in 1984, within a framework of policy and guidance issued by the Department of Health and Social Security. From the late 1980s, following departmental reorganisation, policy responsibility passed to the new Department of Health.

1.20 With the implementation of the Children Act 1989, the powers and duties of the guardian ad litem in public law proceedings were more specifically detailed in accompanying court rules. At the same time, the range of proceedings under the Children Act (known as "specified" proceedings) where it was expected that a guardian ad litem would normally be appointed was greatly extended.

1.21 The role of the guardian ad litem in public law proceedings is to safeguard and promote the welfare of the child before the court. The guardian is under a duty to report to the court on the child's wishes and on matters relevant to the proceedings. In public law (and exceptionally in adoption applications), there is a

[8] Report of the Committee of Inquiry into the Care and Supervision Provided in Relation to Maria Colwell. HMSO 1974 paragraph 227.

"tandem" model of representation where the guardian appoints and instructs a solicitor for the child. The current adoption framework came into force with the 1976 Adoption Act and the 1984 Adoption Rules. The guardian is under a similar duty to safeguard the interests of the child but the role of the reporting officer is adult rather than child focused. Here the function is to witness the parent's agreement to the proposed adoption and to ascertain that any such agreement is given freely, unconditionally and with full understanding.

1.22 The administrative vehicle for the delivery of the GALRO service is the panel of GALROs assisted by the largely advisory functions of the panel committee. Both operate within the statutory framework of the 1991 panel regulations, as amended. There are 54 panels in England and 5 in Wales. Local authorities may, if they so choose, contract out the day to day administration of the GALRO service to a voluntary organisation or other body. Currently, 3 panels in England are contracted out as are 2 in Wales. All are run by different and highly regarded voluntary child care organisations. National standards for the GALRO Service in England and Wales were published in 1995 and have been the subject of intensive follow-up both locally and under the lead of the Department of Health.

1.23 As of March 1998, there are an estimated 1011 guardian "memberships" in England and 58 in Wales. Of this total of 1069, 149 (14%) are local authority employees; 5 are probation officer members whose duties are restricted to adoption cases, and 72 are employees of voluntary child care or other organisations. The remainder are self-employed and total 843 (79%). Some self-employed GALROs are members of more than one panel, membership of two or three being quite common. For this reason, although the total number of memberships is known, the number of individual guardians that this covers is not; nor is it possible to give an accurate figure for the number of GALRO full-time equivalents.

1.24 There are about 70 persons designated as panel management staff in England and Wales, of whom 26 are full-time and the remainder part-time. Some 92 persons are designated as clerical and administrative posts, of whom 44 are full-time and the remainder part-time.

1.25 Guardians ad litem and reporting officers in England are appointed in around 13,300 proceedings annually. Of these, about 4,400 (33%) relate to adoption proceedings and the remainder are applications under the Children Act 1989. In Wales there are around 830 proceedings annually, with similar proportions to England relating to adoption and Children Act matters. Around 61% of adoption cases involve a reporting officer and the remaining adoption applications (39%) require a guardian ad litem.

1.26 **Local social services authorities** also provide information in family proceedings and contribute towards service provision in the following ways: - the preparation of welfare reports under section 7 of the Children Act in private law applications but usually where the social services department has some relevant involvement with the family; - presenting information on child and family welfare issues as applicants (or respondents) in public law proceedings,

principally under section 31 (care/ childprotection) but also relating to other orders which may be sought under the Children Act; - where child protection concerns are raised in the course of private proceedings and under section 37 the court directs the local authority to undertake an investigation; - preparation of Schedule 2 reports in adoption related proceedings; - some partnership funding with voluntary organisations.

1.27 There are no reliable figures regarding the numbers of welfare reports prepared by local authorities in private law. Information from the GALRO service suggests that public law applications involving local authorities as applicant or respondent in the 12 months period ending 31 August 1997 were between 8,700 - 9,100 across England and Wales with around 120 section 37 directions in the same period arising from private law applications.

C. The Current Legal Framework

The consultation document, *Support Services in Family Proceedings: Future Organisation of Court Welfare Services* also provides a simplified overview of the current legal framework in which existing services operate:

The range of family proceedings

2.2 The principal legislation governing the upbringing and protection of children in England and Wales is the Children Act 1989, which draws together and simplifies earlier legislation and integrates the law relating to private individuals with the responsibilities of public authorities.

2.3 The main types of family proceedings in which children may be involved are:

- public law Children Act cases (i.e. applications for local authority care or supervision orders);
- adoption and freeing for adoption (under the Adoption Act 1976);
- parental orders (under the Human Fertilisation and Embryology Act 1990);
- private law Children Act cases (i.e. applications for parental responsibility, residence, contact, etc. when these matters are in dispute between the child's parents);
- wardship (under the inherent jurisdiction of the High Court);
- divorce, judicial separation and nullity of marriage (currently under Matrimonial Causes Act 1973, but see below);
- domestic violence and occupation of the matrimonial home (under Part IV of the Family Law Act 1996);
    - child abduction.

2.4 Private law Children Act proceedings may be ancillary to other family proceedings, such as divorce, or may be initiated by freestanding applications (in particular, by unmarried parents who are unable to reach an amicable agreement about the future arrangements for their children). Where a petition for divorce, nullity or judicial separation has been filed and there is any child of the marriage under the age of 16 (or in certain circumstances over that age) the petitioner must file a "Statement of Arrangements" in respect of the child or children. If there is

no dispute about those arrangements, or it appears to the court that it is not required, or is unlikely to be required, to exercise any of its powers under the Children Act 1989 with regard to the children, the court will certify accordingly. If it does appear to the court that it may be required to exercise those powers it may, amongst other things, order a welfare report. That report may come from the Court Welfare Service or, exceptionally, from a local authority, and in the latter case the local authority would probably already be involved with the family. The court may, in certain circumstances where it cannot be satisfied that the welfare of the child will be properly safeguarded, direct that a decree is not to be made absolute until the court orders otherwise. If there is a dispute between the parties about the children then any application for an order must be made in the matrimonial proceedings. It is also likely that a welfare report will be ordered by the court in those circumstances.

2.5 In deciding whether to use its powers under the Children Act 1989, the court is required to treat the welfare of the child as paramount. Section 11 of the Family Law Act 1996 incorporates a list of factors which, on the evidence before it, the court will have to take into account These are:

- the wishes and feelings of the child concerned in the light of his age and understanding and the circumstances in which those wishes were expressed;
- the conduct of the parties in relation to the upbringing of the child;
- the general principle that, in the absence of evidence to the contrary, the welfare of the child will be best served by: his having regular contact with those who have parental responsibility for him and with other members of the family; and the maintenance of as good a continuing relationship with his parents as is possible; and
- any risk to the child attributable to: where the person with whom the child will reside is living or proposes to live; any person with whom that person is living or with whom he proposes to live; any other arrangements for his care and upbringing.

2.6. Arrangements for the future of the children will need to be completed before the court will grant a divorce order under the new procedure.

2.7 Section 64 of the Family Law Act 1996 gives the Lord Chancellor power to make regulations providing for the separate representation of children in specified circumstances, in proceedings under Parts II and IV of the 1996 Act, the Matrimonial Causes Act 1973, or the Domestic Proceedings and Magistrates' Courts Act 1978.

The structure of the family courts in England and Wales

2.8 There is no single 'family court' in England and Wales, but family proceedings are dealt with in courts at all levels by specially designated and trained members of the judiciary.

2.9 The Family Division of the High Court has full jurisdiction in all family proceedings, including jurisdiction in wardship and in international child abduction under the Hague Convention. It also deals with appeals from

magistrates' courts. The Family Division judiciary comprises the President and 16 other High Court judges. 2.10 At county court level, under the Children Act 1989, there is a network of specialist care centres, family hearing centres and divorce county courts.

2.11 Care centres have full jurisdiction in both public and private law, including: • public law Children Act cases (care proceedings), • contested applications under section 8 of the Children Act (residence and contact), • adoptions and freeing for adoption, and • injunctions.

2.12 The jurisdiction of care centres may be exercised by Circuit judges who are either designated family judges or nominated care judges, and by nominated care district judges. A nominated judge is one who has been selected for family work, has received appropriate training and has been nominated by the Lord Chancellor.

2.13 Family hearing centres have no public law jurisdiction, but full jurisdiction in private law including contested section 8 applications, adoption, and injunctions. Their jurisdiction may be exercised by Circuit judges who are nominated family judges, and by all district judges.

2.14 The jurisdiction of divorce county courts may be exercised by non-nominated Circuit judges, and by all district judges. They can issue all private law proceedings under the Children Act, but contested matters must be transferred to family hearing centres.

2.15 All three types of specialist county courts may deal with domestic violence proceedings under Part IV of the Family Law Act 1996. Other county courts have no family jurisdiction.

2.16 The family proceedings courts, at magistrates' court level, deal with public and private law Children Act proceedings, adoption and domestic violence, but not with divorce. Magistrates who are members of family panels, and Stipendiary Magistrates who hear family proceedings, have special training in this work. 2.17 Where the various levels of courts have concurrent jurisdiction, cases may start at any level, but there are statutory provisions for cases to be transferred up or down (or to a different court at the same level) if that would be more appropriate.

The voice of the child in family proceedings

2.18 The legal system encourages people to resolve their differences amicably whenever possible, in family matters as in other civil proceedings, but when the courts become involved in family dispute resolution, the state itself has an active role in safeguarding the welfare of the child as well as ensuring that his or her legal rights are adequately protected.

2.19 The 'welfare principle' embodied in the Children Act 1989 requires the court, when it determines any question with respect to the upbringing of a child, to treat the welfare of the child as its paramount consideration. Section 1 of the Act includes what is known as the 'welfare checklist': a list of the factors which the court in most applications must take into account when it is considering whether

to make an order under the Act. The first item on the checklist is 'the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)'.

2.20 It is exceptional for children to participate directly (as a party) in family proceedings. Their interests are represented, and their wishes and feelings made known to the court, in various ways.

2.21 In public law proceedings, which involve state intervention in the life of the child and his or her family, the child is always a party whatever his age or level of understanding. The court will normally appoint a guardian ad litem from the Panel of GALROs who will generally be a trained social worker with special expertise in dealing with children and children's cases involving local authorities. In some cases the Official Solicitor acts as a safeguard in court proceedings in which critical and difficult decisions are made about a child's life. The child is also entitled to separate legal representation. Guardians ad litem act as independent professionals undertaking investigations into all the circumstances of the child and matters alleged within the proceedings, and provide a non-partisan view to the court. They are expected to give paramount consideration to the need to promote and safeguard the child's best interest, taking account of the child's wishes and feelings and ensuring that these are made known to the court as well as the range of other factors contained in the welfare checklist. The guardian is required to attend at all court hearings and to advise the court on a range of matters set out in the Family Proceedings Rules 1991.

2.22 The role of a guardian ad litem was significantly expanded and enhanced by the implementation of the Children Act 1989. As well as being appointed in a wider range of cases than before, guardians have taken on a new role as case managers who advise the court on the allocation and timetabling of cases and assist the court in keeping delay to a minimum.

2.23 Guardians ad litem are appointed in 'specified' public law proceedings under the Children Act 1989. In particular, the guardian has a duty to have regard to the 'welfare checklist' in carrying out his or her duties and to appoint a solicitor to act for the child.

2.24 In adoption proceedings, Guardians ad litem are also appointed in adoption and freeing applications under the Adoption Act 1976. In adoption proceedings, there is a similar duty on the guardian ad litem to safeguard the welfare of the child and to investigate any matters which appear to be relevant to the making of an adoption order. A panel guardian ad litem may also be appointed to act as Reporting Officer in adoption proceedings where agreement to the adoption is being given by the parents, but here the role of reporting officer is much more limited and focuses on the adult rather than the child. The reporting officer witnesses the parents' agreement to the proposed adoption and ascertains that any such agreement is given freely, unconditionally, and with full understanding.

2.25 In private law proceedings (including divorce) the court may order a probation officer to produce a report covering the wishes and feelings of the child. Welfare reports tend only to be ordered where the application is contested.

2.26 Family Court Welfare Officers are experienced Probation Officers who have specialist training in welfare work, in addition to their basic qualifications. The key function of the welfare service in divorce proceedings and free-standing private law applications under the Children Act is to provide, at the request of the court, a report giving information and assessments about matters relating to the welfare of a child. This is to enable the court to make decisions which are in the best interests of the child.

2.27 The Official Solicitor's functions include the representation of children in public and private law Children Act proceedings and adoption, but only at High Court or county court level, and only in cases with exceptional features which justify his involvement rather than that of a panel guardian ad litem or a family court welfare officer. Such exceptional cases include those with a substantial foreign element; those involving exceptional or difficult points of law; cases with unusual or complicating features, such as where one parent has killed the other, or is a transsexual; and cases where there is conflicting or controversial medical evidence. In private law cases also he may act, for example, where the child is unaware of the existence of a parent who is seeking contact, where parentage is disputed or where the child's parent is in a homosexual relationship.

2.28 A child who is a party to litigation, as in 'specified' public law Children Act cases, adoption proceedings in the High Court and sometimes in other family proceedings, is entitled to representation by a solicitor, and, where necessary, a barrister. In public law Children Act proceedings one of the duties of the guardian ad litem (laid down by rules of court) is to appoint a solicitor to act on behalf of the child.

Solicitors appointed by guardians as litem to act for children in public law cases are usually but not exclusively members of the Law Society's Children Panel. They are accredited with a degree of specialist knowledge, expertise and experience in relation to the provision of advice and representation of children as well as the working relationship with guardians ad litem. The fact that children themselves have party status in *public* law proceedings, and are normally represented by a solicitor, reflects the particular importance of these proceedings and their potentially serious consequences for the child's future. When the Official Solicitor is appointed guardian ad litem he acts as solicitor as well, save in cases where he is appointed to represent a parent who is under a mental incapacity (representing about 10% of his case load in children cases).

2.29 There are also international obligations to consider, particularly under the United Nations Convention on the Rights of the Child which was ratified by the United Kingdom in 1991. It is therefore part of the United Kingdom's treaty obligations to which the court may have regard.

D. The Bill

1. Overview

The purpose of the Bill is to provide the legislative framework for a new court service to look after the interests of children. As described in the previous section, it is the Government's intention that the service should combine the work of the existing Family Court Welfare Service provided by the Probation Service, the Guardian ad Litem service provided by local authorities, and the Official Solicitor's work as a child's solicitor. The Bill paves the way for this to happen although the practical arrangements for unifying the existing services, pulling the existing local structures into a national whole for England and Wales, and moving some 2,000 staff into the new arrangements will necessarily be a separate exercise.

The effect of the Bill would be that the new service, to be known as the Children and Family Court Advisory and Support Service (CAFCASS), would be a Non-Departmental Public Body (NDPB) responsible to, and funded by, the Lord Chancellor.[9] It would function in relation to "family proceedings" as defined in the Children Act 1989. This means that it would, as existing services do now, give advice on issues such as placing children in local authority care, applications for residence and contact, adoption, disputes about medical treatment and prohibited steps, such as preventing as child being taken abroad. The Bill would also make it possible for the new service to take on new functions in the future.

The reorganisation would also mean that the work of the existing Probation Service would be divided up and that the rest of that service would be able to concentrate on offenders. A separate chapter of the Bill deals with the reorganisation of the rest of the Probation Service and this is covered in a separate Library Research Paper on the criminal justice aspects of the Bill.

The Bill leaves open some of the questions raised in the July 1998 consultation paper, *Support Services in Family Proceedings: Future Organisation of Court Welfare Services*, for example the extent to which children should be represented as parties to private law proceedings (currently rarely) and in public law proceedings (currently as a matter of course), who would appoint the child's solicitor, and the extent to which legal services should be provided in-house or contracted-out.

The Bill, which applies to England and Wales, does not set a commencement date but the consultation document said that it was unlikely that the new service could be set up in less than three years and that it could take up to five years.

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[9] NDPBs are bodies that have a role in the processes of national government, but are not government departments or part of one. Accordingly, they operate to a greater or lesser extent at arm's length from Ministers (Cabinet Office, Public Bodies 1999)

2. Bill details

The Bill provides for:

- The establishment of CAFCASS (referred to as "the Service" in all but the first reference), its constitution and powers (clause 11 and schedule 2). In summary, these provisions include:
    - a chairman and not less than ten other members appointed by the Lord Chancellor
    - provision for regulations covering the appointment, tenure and dismissal of the chairman and other members; co-option of additional members for particular purposes; limits on the number who may be appointed or co-opted
    - power for the Service to pay remuneration, fees, expenses, pension, allowances or gratuities and, where appropriate, compensation; as well as to reimburse expenses or loss of earnings of co-opted members, all as determined by the Lord Chancellor
    - regulations covering procedure, and the establishment, procedure and functions of committees
    - power for the Service to appoint staff, including a chief executive who must be approved by the Lord Chancellor (who may give a direction that other staff must also be approved by him); and for Regulations covering the qualifications etc of staff
    - power for the Service to determine terms and conditions of staff and others carrying out the functions of the Service, subject to the approval of the Lord Chancellor
    - power for the Service to delegate its functions to the chairman or any other member
    - power for the Lord Chancellor to make payments to the Service, if appropriate subject to conditions
    - a requirement for the Service to be performed in accordance with any directions given by the Lord Chancellor and for the Service to provide the Lord Chancellor with any information relating to the performance of its functions that he may require
    - power for the Service to do anything necessary or expedient for the performance of its functions, subject to any directions given by the Lord Chancellor, and a prohibition on its borrowing money without the approval of the Lord Chancellor
    - power for directions, general or special, to be given under Schedule 2
    - requirements for the Service to produce annual reports and accounts, and for the Comptroller and Auditor General to examine, report on and certify the accounts, and lay a copy of his report before Parliament, in particular the Service must:
        - make annual reports, subject to any directions as to the content, form and timing made by the Lord Chancellor, who must lay a copy of the report before each House of

Parliament and publish it in such manner as he considers appropriate
    - prepare annual accounts, send a copy to the Lord Chancellor and Comptroller and Auditor General before the month of August, and comply with any directions as to information, presentation and method made by the Lord Chancellor, who may also require additional information to be included for Parliament
    - appoint, in accordance with directions given by the Lord Chancellor, an auditor who is not a member of staff; and ensure that the auditor reports to the Lord Chancellor
- a requirement that the Service make and publicise a scheme for dealing with complaints
- the Service not to be a servant or agent of the Crown
- the Service to come within the remit of the Parliamentary Ombudsman
- employment with the Service to count as the sort of employment to which a public service pension could apply
- members of the Service not to be allowed to sit as Members of Parliament

- The main functions of the Service (clause 12), which are triggered by family proceedings (as defined in the Children Act 1989 and including proposed and concluded proceedings):

    - To safeguard and promote the welfare of children
    - To give advice to any court about any application made to it in such proceedings
    - To make provision for children to be represented in such proceedings
    - To provide information, advice and other support for the children and their families
    - Other functions conferred by the Bill or other legislation

  The Bill provides for Regulations enabling the service to make grants, including conditional ones, to any person to carry out these functions.

- The Service to be able to make arrangements with organisations to perform functions on its behalf subject to requirements about efficiency, standards, and value for money; to make arrangements with individuals to perform the functions of the Service. Service; to commission, or assist conduct of, research into matters concerned with exercise of its functions (clause13).

- The Service to be able to provide staff or services to other organisations and to be able to charge for these (Clause 14).

- The Service to be able to authorise an officer to conduct litigation in relation to any proceedings in any court; to exercise a right of audience in any proceedings before any magistrates court or county court (Clause 15)

- Officers of the Service to be able to be cross-examined in any proceedings to the same extent as witnesses, subject to rules of court but not when merely exercising a right to conduct litigation or a right of audience (Clause 16)

- Inspectors of the magistrates courts to have a duty to inspect and report to the Lord Chancellor on the performance of the Service (Clause 17)

In addition parts of clauses 18-22 and schedule 3 of the Bill makes provisions for property and staff to be transferred to the new service and Schedule 6 makes consequential amendments to existing legislation that include, for example, replacing references to the existing services with references to the new one.

E. Comments and Responses

Given the short time between publication of the Bill on 16 March 2000 and Second Reading in the House of Commons on 28 March 2000, the Library has received few, and mostly brief responses. But there has been some general commentary on the proposal and pressure for reform predates the Government Review. For example, the Autumn 1998 newsletter of the National Council for Family Proceedings was largely devoted to the issue of court welfare services, including references to articles and books of the early 1990s that were arguing for combining the court welfare work of the Probation Service with that of the Guardian ad Litem and Reporting Officers [10]

The principle of a unified service seems to have widespread support but there are a number of concerns, many of which are not directly addressed by the Bill and are still subject to debate. Soon after the review was announced Judith Timms, Chief Executive of the National Youth Advocacy Service, whose main concern was to establish a free-standing right of children and young people to be consulted and to have a representative speak for them in court, wrote in the journal, Family Law, about the context in which the review was announced:

> The first responsibility of any unified service will be to promote the welfare of the children involved in a variety of proceedings across the family jurisdiction and this cannot be done without protecting the rights of children within those proceedings. In this context it would have been more encouraging if the review had been announced within the framework of the Government's commitment to full implementation of the UN Convention on the rights of the Child, rather than as part of the comprehensive spending review.[11]

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[10] *The Family Justice System* by Mervyn Murch and Douglas Hooper, Family Law 1992 and Guardian Ad Litem V Court Welfare officers – Debunking the Myths, James Lawson, Justice of the Peace and Local Government Law, 26 March 1994

[11] "Child Welfare Services" Judith Timms, *Family Law* April 1998

She has also summarised some of the issues raised at a recent conference organised by the National Youth Advocacy Service. These included concern that a philosophical framework for the service was lacking; that delay in implementing associated legislation, such as Sections 64 and 11 of the Family Law Act 1996, were major contributory factors in clouding long term vision; that there was a need for further consultation on the legal representation of children in both public and private law proceedings; that developments in Northern Ireland should be examined; that not enough attention had been given to the anxieties of the professionals in the service, in particular concerns about the possible emergence of a generic caseworker; and that attention must be paid to providing information to children about the services available to them.[12]

Dr Stephen Cretney, Fellow of All Souls, writing in the Family Law journal soon after publication of the consultation document, commented on the background to the proposals:

> The Government's consultation paper *Support Services in Family Proceedings: Future Organisation of Court Welfare Services* rightly says that change is imperative. Ever since 1907 – when legislation imposed a duty on probation officers to 'advise and befriend' – the probation service has been at the forefront. Probation officers gradually took over the work of the Police Court Missionaries; and in 1937 their special role in domestic cases – both in providing information for the courts and in conciliation – was given statutory recognition. Ten years later, the Denning Report marked a modest start to the creation of what we now know as the Divorce Court Welfare Service.
>
> Over the years there have been many changes, but one constant – the service is part of the probation service. And the ethos of that service was consistent with the aims of a family focused court system – for example, the Children Act 1989 requires a superviser to 'advise, assist and befriend' and probation officers had to have the social work qualification which equipped them to move from delinquency to family work. But we have changed all that. In 1995 Home Secretary Howard scrapped the social work qualification for probation officers; and now Home Secretary Straw plans to transform 'assisting and befriending' into 'public protection'. It is difficult to see the work of the new model probation officers as having any relevance to the family court welfare service. It is this factor which really makes change essential.[13]

A round-up of views in the journal, Community Care, in the autumn of 1998 suggested that the initial reaction to the idea of unified service, at least from guardians ad litem, was positive although there was some concern about the practicalities and the ethos of the new service depending partly on which government department would be responsible. The article began:

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[12] National Youth Advocacy Service, Annual Conference: The New Millennium – Putting Right Children's Rights: CAFCAS: A Unified Service: Court Led or Child Centred, Judith Timms Chief Executive, February 2000

[13] "Court Welfare – Radicalism or Gradualism" Dr Sephen Cretney, *Family Law*, October 1998

> …What has emerged as the services' biggest flaw is the irrationality of having guardians ad litem and reporting officers, family court welfare officers, and certain parts of the Official Solicitor's office, all representing or working with children on issues of parental contact, places of residence and adoption. The ad hoc way the services have grown up means they all provide different but comparable services

On legal representation of children, the article reported conflicting views. One view was that a unified service was the only way most children, both public and private, could get proper access to legal representation in court proceedings. Another was that the consultation document's question 'Is it always necessary to have a lawyer representing children?' might mean that the availability of such representation in public law cases would be cut back.[14] Another article in the journal Community Care about a year later also highlighted some of these fears as well as others relating to the professional development of staff in the two service. Such issues are not directly covered in the Bill but do arise as a consequence of the plan to set up a unified service and would need to be settled eventually even if not by legislation.[15]

The importance of placing the new service in a wider context was stressed by Judge Nigel Fricker in a recent article in the journal, Family Law that examined a range of specific issues relating to the new service. He said that he believed that the way the new service was set up and developed needed to be enlightened by a comprehensive strategy for processing child welfare issues and family dispute resolution:

> CAFCAS[16] should take on the existing child welfare responsibilities of family court welfare, guardian ad litem and reporting officer, and Official Solicitor services. However, my vision is that the overarching concept for CAFCAS should be based on the notion that in the vast majority of child welfare problems and parental disputes, judicial decision should be the last resort.[17]

In response to the Bill itself, the Law Society issued a press release, which said:

> The Law Society welcomes the government's new proposals to set up a single service to look after the interest of children in family proceedings.
>
> The proposals contained in the Criminal Justice and Court Service Bill published today, support the introduction of a new Children and Family Court Advisory

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14 "One pair of eyes" *Community Care* 8-14 October 1998

15 "Courting new roles" *Community Care* 2-8 September 1999

16 At the time he was writing it had not yet been named CAFCASS

17 "The new Children and Family Courts Advisory Service," His Honour Judge Nigel Fricker QC, *Family Law* February 2000. A similar view on this point was expressed by Stephen Cretney in the article of his quoted above.

> Service which the Law Society believes will improve the services provided for children involved in family proceedings.
>
> The Society believes it is essential that the new service is properly resourced and maintains a high calibre of staff. In particular the new service must safeguard the interests and welfare of children whilst protecting their legal rights, by refining the existing successful system of Guardians ad Litem, and solicitors working in tandem to represent children.
>
> Robert Sayer, President of the Law Society said, "The recent Waterhouse inquiry into child abuse demonstrates more than ever the need for high quality, independent advice and legal representation for children. membership of the Law Society's Children Panel is a guarantee that solicitors have met very high standards. It is essential that this expertise continues to be utilised."

The Association of Chief Officers of Probation (ACOP) also issued a press release on the Bill. In relation to CAFCASS, it said:

> ACOP welcomes the creation of this important new service. We are working closely with the Home Office and the Lord Chancellor's Department to ensure the successful establishment of the new organisation.

Carol Edwards, speaking on behalf of the council of the National Association of Guardians Ad Litem and Reporting Officers, said that they had welcomed the idea of a unified service and its potential for greater flexibility but were apprehensive about the way that it might work in practice. In particular, they were anxious that professional standards should be improved but feared there was a danger that they might be watered down. It was important that the level of training for members of the different services to carry out new functions should be adequate. The right of the child to representation in public law cases should be retained, as should the role of the Guardians Ad Litem in appointing a solicitor to represent the child.[18]

II Protection of children

Part II, Clauses 24-35 and Schedule 4

A. Development of government policy

Proposals for making it a criminal offence for a convicted sex offender to apply to work with children were among a range of measures to deal with sex offenders proposed by the previous Government in its 1996 consultation document, *Sentencing and Supervision of*

[18] Telephone conversation

Sex Offenders.[19] The document described the existing provisions and concluded that there was also a case for the creation of a new offence of seeking employment involving access to children.

The consultation document proposed that the offence might be formulated along the lines of making an application for or accepting an offer of an appointment, whether or not remunerated, where the nature of the employment would enable the offender to have direct access to children under 18. It proposed that sex offenders, for the purpose of the new offence, should be only those convicted of offences against children; and proposed a maximum penalty of six months' imprisonment or a level 5 fine. The proposed offence would not be retrospective. The document also raised the issue of personal freedom:

> It is not easy to strike the right balance between providing protection for vulnerable members of society and protecting the freedoms of individuals. We recognise that, in seeking to protect children by the creation of this new offence, there is a possibility that the liberties of those who have been fully rehabilitated from offending behaviour, and who no longer represent a risk, could needlessly be curtailed. There may therefore be a need to provide some form of mechanism for individuals to appeal against or seek a review of the prohibition on employment with children, in order to acknowledge that rehabilitation occurs in some cases.[20]

The consultation document did not propose that employers should also be liable to commit an offence but did say that it was important that, if an offence of this kind was introduced, employers should not let themselves be lulled by it into a false sense of security. It would remain primarily their responsibility to check on prospective employees.

Other measures proposed in that consultation formed the basis of the *Sex Offenders Act 1997* but provisions on working with children were the subject of another consultation exercise. In January 1997, the previous Government published a consultation paper, *Sex Offenders: a ban on working with children,* the results of which partly formed the basis of the present Government's deliberations on the subject (see below). The second consultation document said that the proposal was warmly welcomed by the vast majority of those who responded to the earlier consultation. But a number of respondents had pointed out that careful consideration should be given to defining "seeking work" or "accepting an offer of work" involving access to children.

The document proposed that it should be an offence for anyone convicted of a qualifying offence to seek work or training involving unsupervised contact with children; accept an offer of work or training involving unsupervised contact with children; offer services or

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19 *Sentencing and Supervision of Sex Offenders: a consultation document*, Home Office, Cm 3304, June 1996

20 See above, paragraph 75

agree to provide services involving unsupervised contact with children; and enrol on a training course which will involve having unsupervised contact with children. The same offence was proposed as in the previous document. The document asked a series of detailed questions, and, again, referred to civil liberties:

> It is acknowledged that there are significant civil liberties implications in this proposal. The Government recognises that it will create new restrictions on employment and private life for certain people, but considers that these measures are necessary for the protection of children and are a proportionate response to the problem identified of paedophiles seeking employment with children.[21]

The present Government announced in June 1998 that it was setting up an inter-departmental working group of officials to examine what action might be necessary to prevent sex offenders from working with children. The Government was concerned that existing safeguards were not fully integrated and that there was a need for a more streamlined approached to ensure that there were no loopholes.

The interdepartmental group would draw upon the consultation exercise *Sex offenders : A Ban on Working with Children* and on the recommendations made by Sir William Utting in his review of children in care.[22] It would look at several possibilities, such as a central register of people deemed unsuitable for working with children and the possibility of creating a new criminal offence for anyone on that list who sought work with children.[23] (The Utting report criticised existing provisions and made a number of recommendations but did not propose the creation of a criminal offence.)

The group carried out its own consultation exercise, which was described in its final report published in January 1999. That report contained the views of various organisations and discussed the issues raised. It made a number of recommendations, many of which are now contained in the *Protection of Children Act 1999* (which has still to be brought into force), including the recommendation that: *it should be a criminal offence for a person deemed unsuitable to apply for work accept work, or continue in work with children*".[24] This raised the possibility of banning a wider range of people than sex offenders.

The report said that there was a lot further detailed work to be done and in July 1999, it published an update.[25] The update included more detailed proposals including the

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21 *Sex Offenders: A Ban on Working with Children*, Scottish Office, Home Office, January 1997, page 4

22 *People Like Us, the Report of the Review of he Safeguards for Children Living Away from Home*, Sir William Utting, Department of Health, Welsh Office, 1996

23 *New Action to Prevent Sex Offenders Working with Children*, Home Office Press Notice 4 June 1998; and HC Deb June 1998 c304-5W

24 *Report of the Interdepartmental Working Group on Preventing Unsuitable People from Working with Children and Abuse of Trust*, Home Office January 1999

25 *Interdepartmental Working Group on Preventing Unsuitable People from Working with Children and Abuse of Trust: Update*, Home Office, July 1999

proposal that an employer or equivalent should be liable for an offence, not just the job applicant. A summary of its proposals is reproduced below:

Main structure of scheme

A. The scheme will identify a number of people whose previous conduct when working with children or previous conviction for serious criminal offences against children demonstrate they are unsuitable to work with children.
B. Those identified in this way will be banned from working with children. This ban will be supported by a new criminal offence of working, or applying for, or accepting an offer of, work with children while banned.
C. 'Working with children' will be re-defined. The aim is for the new definition also to serve as the definition of working with children for new Rehabilitation of Offenders Act 1974 (Exceptions) Order.
D. Information on those banned will be made available when applications are made for criminal record and enhanced criminal record certificates from the Criminal Records Bureau. The information will form part of the certificate.
E. The aim is for similar schemes to be put in place for Scotland and N. Ireland, with access to all information on those banned in each country to be available in all three and with reciprocal bans in place.

A. Identification of those unsuitable

1.Proposals for identifying and banning unsuitable people from working with children in the health and social care areas are in the Protection of Children Act. This will give the Secretary of State power to ban people from working with children in services within these areas regulated in some way following dismissal or similar sanction by their employer and after due process including an appeal. Other organisations may also submit cases to the Secretary of State for consideration of persons working in child care positions, but unlike the regulated area, neither the submission of cases nor the observance of the ban will be mandatory.

2. The Secretary of State already has similar powers to ban people from working in schools and educational institutions. Under the Protection of Children Act, these powers will be refined to identify those who are unsuitable to work with children and will become subject to an appeal.

3. The working group recommends a third group of people to be identified as unsuitable to work with children. These should be people who: are aged 18 or over; (there would be a discretion for a judge, in exceptional circumstances only, to apply the ban to someone under 18); are convicted of one of a list of criminal offences committed against children under 18; and receive a prison sentence of 12 months or more. The ban would be imposed by the judge as part of the sentence and subject to appeal as such. There would be provision for the judge not to impose a ban if he considered there were exceptional reasons demonstrating the conviction did not indicate that the individual was a risk to children. There would be statutory criteria to be met for such a decision and the judge should state his reasons in open court; if such reasons did not apply, where the offender was aged 18 or over the ban should always be imposed.

4. Because of the severity of the proposed ban, which goes far beyond the proposals in the Protection of Children Act, the group further recommends that there should be a process for all those banned, by whatever method, for their bans to be reviewed. The review should fall to the new tribunal being set up in the Protection of Children Act. However this review: should be available only following 10 years after the imposition of the ban or the release from prison, whichever is later; and at 10 year intervals thereafter; (for those exceptionally banned when under 18, the relevant initial period before review would be 5 years); and should only be available if the banned individual can demonstrate exceptional circumstances why the ban should be removed.

B. The ban on working with children

5. An individual banned from working with children would be liable to criminal sanctions if he applied for, accepted an offer of, or worked with children when banned. The ban would apply to all work that fell within the definition of working with children, including voluntary work (see paragraph 10 below).

6. There would be a defence that he or she did not know and could not reasonably be expected to have known that the work in question constituted working with children. There would also be a defence if the individual did not know, and could not reasonably be expected to have known, he was banned from working with children.

7. The offence would be an arrestable offence, subject to a maximum of 5 years imprisonment, unlimited fine, or both.

8. An employer or equivalent who took a person he knew was banned from working with children for work he knew or could reasonably be expected to have known fell under the definition of working with children would be liable for an offence. The offence would again be an arrestable offence, subject to a maximum of 5 years imprisonment, unlimited fine, or both.

C. 'Working with children'

9. The definition of working with children would go beyond the definitions for the specific health and social care and education bans covered by the powers of the Secretary of State. It would cover a wide range of work, including education, health and social care, accommodation, leisure and sporting activities, religious activities, and the criminal justice system.

10. It would apply regardless of the status of the work – it would apply to paid and unpaid work in the public, private, voluntary and volunteering sectors.

11. It would be based on the concept of 'role' or 'position', not 'office' or 'employment'.

12. It should focus on key providers of services, not ancillary staff (except in particular settings such as schools and residential children's homes where all staff would be covered).

13. Except in the specific settings, the contact between child and adult should be a normal part of the job, not incidental or one-off contact.

14. Immediate supervisors, managers, and those in a position to take decisions to appoint or dismiss people working with children would be themselves classed as working with children. This would be limited to those with direct 'control' at 'one level up' from 'front line' child workers. In addition some specified groups in the education and social services field, such as school governors, directors of social services and members of local authority social services committees, and charitable trustees in the areas covered by the definition, should be included within the definition.

15. 'Children' would be defined as those aged under 18 years of age. The exception would be children in employment of any kind (see paragraph 16 below).

16. In the employment context, children should be defined as those aged under 16. Those regularly training or supervising children under 16 as part of the normal course of their duties, for example in the entertainment industry, should be covered by the definition. Employers per se of children, even those aged under 16, should not be covered unless a system of licensing or registering such employers with local authorities were introduced.

17. The same definition of working with children should form the basis for the scheme and for the definition within the new Rehabilitation of Offenders Act 1974 (Exceptions) Order

D. Information on those banned

18. Information on those banned would form part of the criminal and enhanced criminal record certificates when applications for certificates in respect of working with children were made and countersigned by registered bodies.

19. Some of those employing people to work with children, such as parents employing nannies or private tutors, would not be registered bodies. They thus would not have access to such certificates, although they would be able to ask for information on spent convictions and the ban if the work fell within the terms of the new Exceptions Order. However agencies providing such people should have access. In addition parents, and indeed all those taking on people to work with children, should make careful checks of references, previous experience, and personal interviews. Useful guidance on this is contained in the DfEE booklet 'Need a Nanny? A Guide for Parents' issued earlier this year.

E. UK wide coverage of scheme

20. The aim is for the scheme to be UK wide. Powers will need to be taken in the legislation to extend the various provisions in due course.

Impact of scheme on organisations

21. The scheme does not impose new requirements on organisations outside those contained in the Protection of Children Act and existing legislation. Access to information will be via the Criminal Records Bureau on a mainly voluntary basis apart from those organisations which fall under the mandatory requirements in respect of List 99 and the new Department of Health List. As with making checks of criminal records generally, organisations will be encouraged to use such checks sensibly, as only one part of the whole process of good recruitment practice and monitoring within the workplace. This may mean that where a very recent check has been made in a previous job, a further check will not always be needed, for example if there is a clear employment trail and references are obtained from the previous organisation.

22. There may be marginal additional costs for certificates issued by the Criminal Records Bureau because of the additional information to go on them about the Secretary of State bans. However these should be more than off-set by savings for organisations through having a single access point for the information. It is difficult to make a judgment over whether organisations are more likely to make checks because of the integrated scheme than they would be anyway under the proposals in Part V of the Police Act 1997. Any such possible increase should be set against the fact that the new criminal offence should make it less likely that someone banned would apply for work with children. Hence organisations would be less likely to go through a full recruitment process only to find the preferred candidate was unsuitable as a result of his past criminal record or misconduct in previous work with children.

B. Existing Provisions

Current proposals need to be understood against the background of existing provisions for obtaining information about the criminal and other relevant background of people seeking work with children, most of which are currently in the process of reform. These provisions are very briefly outlined here.

Existing provisions relating to sex offenders may also be relevant. For example, the *Sex Offenders Act 1997* imposes a requirement on those convicted or cautioned for sex offences to notify the police of their name and address and any changes to these. The aim is to allow the police to monitor sex offenders in the community and to take action where appropriate to warn employers of any risk that they might represent.[26] Sex offender orders under the *Crime and Disorder Act 1998* may also be relevant. The Act provides for courts

[26] HL Deb 4 June 1998 c51W

to make orders imposing prohibitions that will apply to sex offenders if their behaviour indicates a possible threat to the public.

Only a restricted range of employers can obtain criminal record checks of those that they wish to employ. Currently those that are able to do so do not have to pay a fee. Those employing people in posts involving substantial access to children are among those who are able to make checks although not all voluntary organisations doing so have access to the records. They have to be members of the Voluntary Organisations Consultancy Service (VOCS) whose membership is now closed.

Some employers who are unable to obtain criminal record information directly from the police have exploited provisions of the *Data Protection Act 1984* that give individuals the right to see computerised records held about themselves. Employers require prospective employees to obtain a copy of their record (if any) on the Police National Computer as a condition of offering them a job. The police charge £10 for this information. This practice, referred known as *enforced subject access* will be outlawed under the *Data Protection Act 1998* once Part V of the Police Act 1997 has been brought into force.

Circulars issued by several government departments and drawn up jointly with the Association of Chief Police Officers describe procedures for accessing records held by local police forces.[27] As these circulars explain, a criminal record does not automatically mean that the individual will be banned from employment. It is up to the relevant employer to decide if this appropriate. It is possible, however, that someone could be banned under specific legislation (see below).

These arrangements will be affected by reforms currently under way, particularly those under the *Police Act 1997*, which introduces charges for such checks. Access to such records is also affected by provisions in the *Rehabiliation of Offenders Act 1974* and Regulations made under it, which are also in the process of change. These allow certain convictions to become spent after a period of time has elapsed and provide that a spent conviction is not a lawful ground for excluding a candidate from a job. There are many exceptions and most people working with children would be among the exceptions, that is, their convictions would not become "spent". The Government proposes to align the exceptions with the list of occupations for which a criminal record certificate (revealing spent as well as unspent) convictions could be issued.

The *Police Act 1997* provides for three types of certificate containing information about criminal records. Different amounts of information would be available according to the type of certificate. In the case of the two higher levels of certificate, a "registered person",

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[27] In particular, *Protection of Children:Disclosure of Criminal Background of those with Access to Children* 1993 and *Protection of Children: Disclosure of Criminal Background to Voluntary Sector Organisations.*, 1994. (Both these were issued by several government departments and therefore have several reference numbers. For example, the Home Office and Department of Health numbers are HOC 47/93 and LAC (93) 17 for the former and HOC 42/94 and LAC (4)22 for the latter)

that is a person registered under section 120 of the *Police Act 1997*, will have to sign the application stating that the information is required for the purposes of a conviction exempted from the spent convictions provisions of the *Rehabilitation of Offenders Act 1974.* In the case of the top level certificates, to be known as *enhanced criminal record certificates*, which is likely to be the relevant one, the registered person has to state that the information is being requested in the course of considering someone's suitability for a purpose or position in respect of which such certificates are available. These include paid or unpaid positions involving regular caring for, training , supervising or being in sole charge of under-18s, or for various other purposes, including the registration of child minders and the placing of children with foster parents.

Under the *Child Protection Act 1999*, which has not yet been brought into force, the Criminal Records Bureau will provide not only information about criminal records, but, in relation to *enhanced criminal record certificates*, also information on the lists held by the Department for Education and Employment and the Department of Health. These lists contain information about people unsuitable to work with children not only because of offences they have committed but for other reasons as well, for example, if they have been dismissed because they were considered unsuitable to work with children.

The Act also makes changes to the lists, particularly the Department of Health one, which had no statutory basis and was part of a largely voluntary scheme.[28] That list, as it will be when reformed, is now usually referred to as the list held under Section 1 of the *Protection of Children Act 1999.* Lists relating to the education sector are covered by the *Education Reform Act 1988* and the *Education Act 1996*. The former is often referred to as List 99 and was amended by the *Protection of Children Act 1999* so that people who are on it because they are unsuitable to work with children are separately identified. The later refers to independent sector and is being amended by the *Care Standards Bill.*

The Protection of Children Act introduces an appeal procedure and Tribunal for both lists, but appeals to the Tribunal to be removed from the list cannot be made once someone has definitely been place on it unless there has been a mistake such that the individual should not have been placed on the list in the first place.

The Act covers only the education, health and social care sectors and only child care organisations that were already covered by existing legislation are required to make checks (although others may do so). The Act requires these organisations to make checks to see if individuals that they propose to employ are on the lists and prohibits them from employing them if they are but does not introduce any criminal sanctions.

Apart from this Act, which has not yet come into force, there are some provisions that require checks to be made and some that ban certain people from employment. For example, under education legislation, the Secretary of State can ban someone from

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[28] See Library Research Paper 99/21 for the background to the Act.

working as a teacher[29] and Regulations introduced in 1997 prohibit fostering and adoption agencies from approving anyone as a foster carer or adoptive parent where either they or any adult member of their household over the age of 18 is known to have committed a specified offence.[30] These Regulations introduce a specific duty for adoption authorities to obtain information about criminal convictions and cautions in respect of specified offences (if any) of someone applying to be an adoptive parent. They also introduce a requirement that those responsible for managing residential care whether in the statutory, voluntary, or private sector undertake full criminal record checks before a person can be appointed to a position in children's home involving *substantial, unsupervised access on a sustained or regular basis* to children. However, in relation to children's homes, they do not introduce an automatic prohibition on the appointment of people who have such convictions.[31]

C. The Bill

1. Overview

The Bill would create new criminal offences:

- for people working with children while disqualified
- for people offering such work to someone who is disqualified.

The definition of work (referred to as work in a "regulated position") is designed to cover all sectors. It would thus extend the positions covered beyond those currently covered by the banning provisions in the *Protection of Children Act 1999* (which do not in any case go so far as to create a criminal offence).

The Bill would include voluntary work but exclude work that involves casual contact with children, such as a supermarket assistant. Children are defined as those under the age of 18 except where they are employed, in which case the definition is those under 16. However, an employer whose normal duties included caring for children under the age of 16 in the course of the children's employment would be included (as proposed in the interdepartmental report reproduced above, which gave the example of the entertainment industry as one where children may be employed and cared for).

The penalty for individuals guilty on summary conviction would be imprisonment for up to six months or to a fine not exceeding the statutory maximum or both; on conviction on indictment, it would be imprisonment for a term of up to five years or a fine or both.

Disqualification would apply in two situations:

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29 *Education (Teachers) Regulations* SI 1993/543

30 *The Children (Protection from Offenders) (Miscellaneous Amendments)* Regulations SI 1997

- where the person was on one of the existing lists of people unsuitable to work with children described in the previous section
- where someone was subject to a disqualification order.

The disqualification order would apply to people who had committed offences against children specified in the Bill. The lists would cover people deemed unsuitable to work with children for a variety of reasons, not necessarily for having committed an offence.

The disqualification order is a new provision. Where someone commits one of the offences against a child listed in the Bill and a qualifying sentence (12 months or more) or relevant order is imposed, the court would be able to make a disqualification order at the time of sentencing. The court would have to make the order if the individual was aged 18 or over unless it was satisfied that the individual was unlikely to commit a further such offence. The court would have to give reasons if it did not make an order. For those aged under 18, the presumption would be the other way round; the court would only make an order if it was satisfied that the individual was likely to commit a further offence. The court would have to give reasons if it did make an order.

The Bill provides for appeals against a disqualification order but once made, a disqualification order would disqualify an offender indefinitely unless the individual could prove to the Tribunal that his circumstances had change sufficiently to warrant a review of the order. The individual would then have to demonstrate to the Tribunal that he was no longer a risk to children. The review process would only be available after a period ten years (five for those under age 18) after the disqualification was imposed or the offender released from custody.

The Tribunal to which appeal could be made would be the one to be set up under the *Protection of Children Act 1999* to deal with appeals against being placed on the lists of people considered unsuitable to work with children. One of the more controversial issues during the passage of the *Protection of Children Act* through Parliament was that under that Act, once on the list, an individual would be on it forever. There would be no appeal on grounds of change; only on the grounds that there had been a mistake and the individual should not have been included in the first place. The appeal provisions in this Bill would also apply to those on the lists.

These child protection provisions are intended to apply UK-wide when equivalent statutory provisions are in force in Scotland and Northern Ireland. The Bill would provide a power for the Secretary of State to apply the criminal offence provisions to someone in England and Wales who was disqualified under the law of Scotland or Northern Ireland.

The Bill does not require anyone to make checks but there are such requirements in the *Protection of Children Act 1999* for child care organisations as defined in that Act. Once

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[31] The changes made by the 1997 regulations are described in Department of Health local authority circular LAC (97) 17

the Criminal Records Bureau (described in the previous sections of this paper) is functioning, those with access to it would be able to obtain information about whether an individual was on one of the lists, whether s/he had a criminal record and whether s/he was subject to a disqualification order in one operation.

2. Bill Clauses in outline

Clause 24 of the Bill, together with *Schedule 4*, defines an offence against a child. Schedule 4 lists the offences. They are all offences against children and mainly, but not exclusively, sexual offences. For example, they also include murder, manslaughter and kidnapping.

Clause 25 provides that someone convicted or charged with an equivalent armed forces offence is to be treated as having committed an offence against a child.

Clause 26 provides for a disqualification order where the individual convicted of an offence against children is aged 18 or over. The conditions for disqualification are that the individual is convicted of an offence against a child, that a "qualifying sentence" has been imposed or that a relevant order has been made. The order must be made unless the court is satisfied that the individual will commit a further offence against a child. If the court does not make an order, it must give its reasons for not doing so.

Clause 27 provides for a disqualification order where the individual convicted of an offence against children is under the age of 18. Otherwise the same conditions apply. But in this case the court is only required to make an order if it considers it likely that the individual will commit a further offence against a child. If the court makes an order, it must state its reasons for doing so.

Clause 28 defines a "qualifying sentence", as in effect one of 12 months or more and includes equivalent armed forces sentences.

Clause 29 provides for appeals against a disqualification order (as appeals against that sentence).

Clause 30 provides for reviews of a disqualification order (that is at a later date) to a Tribunal.

Clause 31 sets out the conditions for applying for a review, which in the case of an individual under the age of 18 is at least five years since the relevant date (eg when release from custody) and on condition that no application has been made in the intervening period; d in the case of someone aged over18 or over the period is ten years.

Clause 32 creates new criminal offences: an individual who is disqualified from working with children who knowingly applies for, offers to do, accepts or does any work in a" regulated position" would be guilty of such an offence, as would an individual who

knowingly offered work to, or procures work for, an individual disqualified from working with children. In the case of the former, the clause provides that it would be a defence for the individual to prove that he did not know, and could not reasonably have been expected to know, that he was disqualified from working with children.

The Clause also provides that individuals on the lists of people considered unsuitable to work with children would be disqualified from working with children for the purpose of this provision, so that both they and those subject to a disqualification order could potentially commit the new offence.

Clause 33 defines *regulated position*, listing both types of position, such as a position whose normal duties include work on day care premises, and specific positions, such a director of social services of a local authority.

Clause 34 provides that the Secretary of State may by order provide that section (clause) 32 shall apply to someone who is subject to an equivalent disqualification in Scotland or Northern Ireland.

Clause 35 contains a list of definitions of terms used in this part of the Bill.

Clause 56 and Schedule 6 paragraph 45 amend the Protection of Children Act 1999 to add a right to a review for those on the lists of those considered unsuitable to work with children. It also sets out the conditions for such an application, which include the same time limits as for a review under Clause 31.

D. Responses

The only response so far received in the Library is from Liberty, the National Council for Civil Liberties), which said:

Liberty understands and welcomes the Government's initiatives to protect children from those who pose a serious risk to them. We have expressed concerns during the course of the Child Protection Act and the current Care Standards Bill about procedures for identifying those who pose a serious risk. Once these individuals are correctly identified, by a fair process, we accept that these individuals should be banned from working with children, where it can be shown that they continue to pose a risk. Whilst welcoming the new right of appeal Liberty makes the following comments about the detail the following proposals.

Clause 26 (5)

For laws that effectively ban a person from carrying out their occupation with criminal sanctions that can lead to imprisonment, Liberty considers that the burden of proof should remain with the state to prove that the restriction is necessary and that the risk remains.

This clause provides in effect that the court must make an order, unless the court is satisfied that it is unlikely that the individual will commit a further offence. This places the burden of proof on the individual, to prove that he is not a risk. We therefore consider this clause should be amended to require that an order be made if it is likely that the individual will commit a further offence against a child.

Clause 30

The burden of proof again arises in this clause which provides that the tribunal must be satisfied that the individual is suitable to work with children, before lifting a ban. This places the burden of proof on the individual. We consider that the test should be that the tribunal is satisfied that the individual is likely to be a risk to children, the same test that has to be satisfied to impose the ban initially.

Summary

We consider that in these two Clauses the burden of proof should not be reversed, so that it remains with the state and not the individual to prove future risk.

III Truancy

(Clause 55)

1. Background

Currently, parents can be prosecuted by the LEA under section 444 of the *Education Act 1996* if their child does not attend school regularly. If convicted, the offence carries a level 3 fine of a maximum of £1,000. David Blunkett, the Education and Employment Secretary, announced in September 1999 his intention to consult on raising the offence to a 'level 4' offence which would increase the maximum to £2,500 on each parent and allow the magistrates to issue an order requiring the parent to attend the court or face arrest. At present, around 80% of parents do not attend court. Before bringing proceedings under section 444, LEAs must consider whether an alternative (or additional) course of action would be to issue an education supervision order[32] which places the child under supervision of the LEA. In the Press Notice announcing the decision to consult, the DfEE outlined the evidence on the level of truancy:

> 2. Following the report by the Social Exclusion Unit in May 1998[33] the Government committed to reducing truancy by 113 by 2002. (DfEE PN 228/98) In the 1997198 school year 0.7% of half days were missed due to truancy. On average a regular truant will miss 15 half days. We estimate that about 16 million

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[32] *Education Act 1996* s.477 and *Childrens Act ss*.35 and 36 and Sch 3 Part III

[33] Truancy and school exclusion. Social Exclusion Unit. Cm 3957. May 1998

> half day sessions at school are missed. In 1992 a Home Office random survey showed that 37% of young men and 28% of young women admitted to skipping school for at least one day without permission. The latest Youth Cohort Study showed that 2% of 16 year olds (year 11) truanted for weeks at a time. It also showed that 38% of truants reported they had no GCSEs, compared with 3% of non-truants. Another study estimated that 44% of truants believed their parents knew they were truanting. There are also strong links to crime: Home Office research showed that truants were three times more likely to offend than non-truants. A Basic Skills Agency study of 500 convicted offenders in Shropshire found that 64% said they were habitual truants. The Audit Commission study of 1996, Misspent Youth, shows that 65 per cent of young offenders of schoo1 age who are sentenced in court have been excluded from school or truant significantly. A 1995 Home Office research study Young People and Crime showed that 78 per cent of boys and 53 per cent of girls who truanted once a-week or more committed offences.
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> 3. Details on the number of prosecutions are not collated centrally, though it is estimated that on average Local Education Authorities undertake 60 prosecutions per year.[34]

The consultation document *Tackling Truancy Together* was issued in November 1999.[35] It outlined the extent of the problem, the resources[36] being made available and the action taken so far which included targets, home-school agreements, and the power to reduce the curriculum for 14-16 year olds to allow for work-related learning. It also referred to the Connexions strategy for providing support to 13 to 19 year olds. The statutory provisions for this new service are in Clauses 103-112 of the *Learning and Skills Bill* (HL)[37]. This Bill is expected to have its Second Reading in the House on 30 March 2000.

Tackling Truancy Together set out proposals for further action including publicising good practice; changes in the management of the Education Welfare Service by devolving funds for it to secondary schools; and raising the offence of non-attendance to level 4:

> NON-ATTENDANCE AT SCHOOL AND THE COURTS
>
> Finally, as the Secretary of State announced on 29 September 1999, the Government is concerned that the current court arrangements for parents whose children do not attend school are not working properly. As noted earlier, even when parents are taken to court, 80% fail to turn up. That situation cannot be allowed to continue. The Government therefore plans to increase school attendance offences to level 4 of the national scale of penalties to empower Magistrates to require parents to attend court or risk arrest. This change will also

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34 Blunkett to consult on £5000 fines for parents of persistent truants. DfEE PN. 29 September 1999

35 DfEE 1999

36 Nearly £500 million over three years through the Standards Fund

37 HL Bill 47 as amended on report

> give Magistrates the opportunity to reinforce to parents the seriousness of the offence. It will also allow Magistrates to impose deferred sentences, providing parents agree to work in conjunction with the Education Welfare Services and other related agencies, such as the local Youth Offending Team, with the aim of returning the child to school.
>
> Although this means that parents can be fined up to £2,500 each under the new proposals, the raising of the penalty is aimed at challenging the culture which tolerates the absence of children from school. It is not about imposing higher fines on parents who in many cases are on low income. Magistrates will be able to impose fines dependent on individual circumstances.[38]

The consultation closed on 13 December 1999. A Parliamentary Answer by Jacqui Smith, Minister with responsibility for School Standards, on 20 January 2000 said that responses were being considered and an announcement was expected shortly.[39]

The responses have been analysed but the paper is still with Ministers and no announcement of future action on all issues has yet been made.

2. Other legal sanctions

A School Attendance Order[40] can be served on a parent if a child is not receiving suitable education. Parents can be prosecuted for breach of a School Attendance Order and, if convicted, fined at level 3. Magistrates can also impose a Parenting Order under Section 8 of the *Crime and Disorder Act 1998.* These are being piloted at present but will be available nationally from April 2000. They require parents to attend counselling or guidance sessions and comply with specific requirements. Parenting Orders can also be used in connection with offences under section 444 (see above). A breach of an order can result in further prosecution.

3. Scotland

Tackling Truancy Today stresses the importance of Magistrates having the opportunity to reinforce to parents the seriousness of the offence. In Scotland there is an element of accounting formally in a non-judicial setting for a child's failure to attend school.

Parents in Scotland can be prosecuted for failing to ensure that their child attends school regularly.[41] There is a statutory procedure to be followed by the education authority in relation to irregular attendance.[42] A parent must be served with a notice requiring him to

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38 *Tackling Truancy Together: A Strategy Document*. DfEE 1999. pp.16-17
39 HC Deb 20 January 2000 c.540*W*
40 *Education Act 1996* s.443
41 *Education (Scotland) Act 1980* ss.30 and 35
42 s.36

appear before the authority to explain the child's absence.[43] In practice, the parent may be seen by a special sub-committee of the education authority or by an official, the head teacher or in some cases the school board. If the parent fails to satisfy the authority with a reasonable excuse for the child's absence, the authority may decide to prosecute immediately or after a short delay to allow for the resumption of regular attendance. Prosecution can be at the instance of the procurator fiscal to whom the authority has referred the case or by a person authorised by the authority, usually the education authority solicitor. The case can be brought in either the district or the sheriff court. If convicted, the parent is liable to a fine (up to level 3) or a term of imprisonment (for a repeated offence) or both.[44] The case can also be referred to the children's panel.

4. Bill

Clause 55 increases the offence to level 4 thus increasing the fine to £2,500 and allows the alternative of imprisonment for up to three months or both a fine and a prison sentence.

Section 13 of the *Magistrates' Court Act 1980* restricts magistrates powers to issue arrest warrants in respect of people who have been accused of offences but fail to appear at court to people accused of offences punishable with imprisonment.

5. Reactions

The original announcement by the Secretary of State had the whole hearted support of the National Association of Head Teacher[45] and Secondary Heads Association, but the NASUWT were more sceptical of its likely effects.[46]

The National Association for Care and Resettlement of Offenders responded to the Bill with:

> Jailing the parents of truants will do nothing to cut crime. Truants often come from a disrupted or unstable family background, so the added instability of a jail sentence for their parents would compound, rather than alleviate, a difficult situation. NACRO runs a number of projects working with persistent truants. Our own experience shows that positive programmes which engage with truanting school children can have a dramatic effect in changing their attitudes and ensuring they get an education.[47]

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43 s.36
44 ss.43 and 44
45 NAHT Supports tougher truancy sanctions. NAHT PN 29 September 1999
46 Parents face massive fines *TES* 1 October 1999
47 Response from National Association for Care and Resettlement of Offenders

The Police Superintendent's Association for England and Wales have expressed their support for these provisions with the "general approval for the truancy measures in particular."[48]

[48] Response from Police Superintendent's Association for England and Wales