



RESEARCH PAPER 00/63
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The Children Leaving Care Bill [HL]

Bill 134 1999-2000

The Bill extends the duties of local authorities to care leavers and removes the entitlement of 16 and 17 year old care leavers to the main income-related benefits. It makes the authority that last looked after the young person responsible for the after-care duties rather than the authority in which the young person is living. Local authorities will have a new duty to keep in touch with care leavers, to provide them with a personal adviser and to prepare pathway plans mapping their route to independence, including support to be provided by the local authority.

The Bill applies to England and Wales except for Clause 6, which deals with social security benefits and therefore also applies to Scotland.

The Second Reading in the House of Commons is due on 21 June 2000.

Jo Roll

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Summary of main points

The main purpose of the *Children (Leaving Care) Bill* is to extend the duties of local authorities to care leavers. The Bill does this by amending the *Children Act 1989*. It also removes the right to certain social security benefits of 16 and 17 year old care leavers, whose entitlement was already relatively limited compared with that of older claimants. The Bill incorporates existing provisions for care leavers as well as adding new ones. This summary focuses on the main new provisions.

The Bill defines three groups of care leavers who are covered by the new provisions in slightly different ways. They form a more closely defined group than those covered by existing provisions for care leavers although precise details of the definitions are likely to be covered in Regulations. The three groups are: *Eligible children*, who are those in care aged 16 and 17, *relevant children* who are those aged 16 and 17 who meet the criteria for *eligible children* but have left care, and *former relevant children* who are aged 18+ and were *relevant* or (if aged 18 on leaving) *eligible children*.

The Bill also changes the authority responsible for care leavers from the one where the child is living to the one which last looked after a *relevant* or *eligible* child.

Clause 1 of the Bill (includes new Paragraphs 19A-C of the *Children Act* Schedule 2): defines and covers *eligible children*. It provides that local authorities must: assess the needs of *eligible children* with a view to determining what advice, assistance and support they should provide; prepare a *pathway plan* for each child and keep it under review; and arrange for each child to have a *personal adviser*.

Clause 2 of the Bill (includes new Section 23A-C of the *Children Act*) can be divided into two: the provisions that apply to *relevant children* and the provisions that apply to *former relevant children*.

Clause 2 defines *relevant children* and provides that the local authority that used to look after a *relevant child* must: *keep in touch* with the child whether he is in their area or not; re-establish contact if it loses touch (and keep trying until it succeeds); if it has not already done so, appoint a *personal adviser*, prepare a *pathway plan*, which it must keep under review, and carry out an assessment of needs as for *eligible children*; unless satisfied the child does not need it, maintain him by providing him with, or maintaining him in, suitable accommodation and providing such other support as may be prescribed. This support may be in cash and existing provisions relating to means-testing, as well as those relating to whose wishes must be taken into account, are carried over.

Clause 2 also defines *former relevant children* and creates new duties that apply to them up to the age of 21 (and beyond in the case of education and training). It provides that the local authority that used to look after the child must: keep in touch and re-establish contact if it loses touch; continue the appointment of a *personal adviser* and keep the *pathway plan*

under review. New duties added during the Bill's passage through the Lords are to: provide assistance with expenses associated with employment; provide assistance with expenses associated with education and training (and as long as the course continues, a personal adviser, pathway plan and vacation accommodation where necessary); and provide general assistance where the welfare of the young person requires it.

Clause 3 of the Bill (includes new Sections 23D-E of the *Children Act*): provides for the Secretary of State to be able to require local authorities to provide *personal advisers* for other classes of children. It also sets the main areas to be covered in *pathway plans* (provision for details and reviews to be prescribed in Regulations)

Clause 4 of the Bill (includes a rewritten Section 24 and new Sections 24A-D of the *Children Act*): rewrites the existing Section 24 and covers a wider range of care leavers than those defined in Clauses 1 and 2, as well as, for some purposes, young people leaving certain other institutions. New provisions include enabling local authorities to provide assistance with education and training under this Section up to the age of 24 regardless of when the course started. (Currently the course must have been started before the young person was aged 21.) The Clause also requires local authorities to provide, or pay for, vacation accommodation under Section 24 for care leavers (in the wider sense).

Clause 5 of the Bill provides for representations and complaints procedures for care leavers (with details to be set in regulations).

Clause 6 of the Bill excludes *eligible* and *relevant children* from claiming Income Support, Income-related Jobseekers' Allowance and Housing Benefit (with provision for exceptions in Regulations).

Clause 7 of the Bill deals with minor and consequential amendments.

Clause 8 of the Bill deals with interpretation commencement and extent. The commencement date is not specified in the Bill but the Government has said that the provisions and associated Regulations (not all mentioned in this summary) will come into force in April 2001, with the possible exception of the new provisions that were added for older care leavers during the passage of the Bill through the House of Lords. Except for Clause 6, which covers social security benefits, the Bill applies to England and Wales only. As social security benefits are a reserved matter, Clause 6 applies to Scotland as well.

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I Introduction

The *Children (Leaving Care) Bill* was introduced in the House of Lords on 19 November 1999. As originally published, it focused on 16-17 year olds. It was amended in the House of Lords to include more provision for those aged 18 and over and the amended Bill is due for its Second Reading in the House of Commons on Wednesday June 21 2000.

II Background

The Bill is based on the 1997 Utting Report's recommendation that the duties of local authorities relating to children leaving the public care system should be extended. This general recommendation was supported by the Health Select Committee, which made more specific and further-reaching proposals for amending existing legislation in order to help care leavers. The Utting Report's general recommendation was accepted by the Government in its formal response to the Report and in its reply to the Health Select Committee, both published in 1998. The Government's commitment to legislate in this area was also made in the White Paper on social services of that year. The Government's more detailed proposals for changes in legislation were published in its consultation document, *Me Survive, Out There? New Arrangements For Young People Living In And Leaving Care*, published by the Department of Health in June 1999.

A. The Utting Report

A series of scandals in children's homes led the previous Conservative Government to set up two enquiries relating to children in the public care system. One was the judicial enquiry headed by Sir Ronald Waterhouse specifically into the abuse of children in care in North Wales and the other was the wider-ranging review into safeguards for children living away from home, headed by Sir William Utting. These were both set up in 1996 and were announced by John Major, who was then Prime Minister.¹

The Waterhouse Report was not published until February 2000² but the Utting Report appeared in November 1997³ and, among its many recommendations, it said that local authorities should not forsake their responsibilities as parents until the child that they were looking after had reached the age of 18.⁴ To this end, existing legislation should be amended:

¹ HC Deb 13 June 1996 c 421

² *Lost In Care, Report of the Tribunal Of Inquiry Into The Abuse Of Children In Care In The former County Council Areas Of Gwynedd And Clwyd Since 1974*, HC 201 of 1999-2000, February 2000

³ Sir William Utting, *Safeguards for Children Living Away From Home*, Department of Health and Welsh Office, 1997.

⁴ Sir William Utting, *People Like Us*, The Report of the Review Of The Safeguards For Children Living Away From Home, The Department of Health, The Welsh Office, November 1997 paragraphs 8.54 - 8.64

Local authorities are required by Section 24 of the Children Act to advise, assist and befriend each looked after child with a view to promoting his welfare after he ceases to be looked after. They also have a duty to advise and befriend children they have looked after beyond their 16th birthday until they reach 21, but they have only a power - not a duty - to assist them in kind or, exceptionally, in cash...

...The Review is forced to conclude that Section 24 of the Children Act should be amended to extend the duty of local authorities to give assistance to young people they have looked after, including helping foster carers to continue providing support. This appears to be a significant extension: the Inspectorate estimated that 33,450 young people were eligible for leaving care services at 31 March 1995. Nevertheless, additional investment in this highly vulnerable group at this critical stage seems entirely justified. Amendment to the Act should also make clear that provision is the responsibility of the 'looking after' authority.

The problem, as seen in the Utting Report, was the vulnerability of care leavers, many of whom were poorly equipped to lead an independent life, the poor level of services for care leavers, and the practice in some local authorities of encouraging young people to leave care prematurely. The Report's recommendation was based on the findings of several other reports. One of these, a report by the Department of Health's Social Services Inspectorate (SSI), summarised key findings of these studies and reports. A summary is set below. Due to the lack of official statistics on this subject they have been frequently quoted in Government statements since then.⁵ (More facts and figures are provided at the end of Section C below.)

- More than 75% of care leavers have no academic qualifications of any kind⁶
- More than 50% of young people leaving care after 16 years are unemployed⁷
- 17% of young women leaving care are pregnant or already mothers⁸
- 10% of 16-17 year old claimants of DSS severe hardship payments have been in care⁹
- 23% of adult prisoners and 38% of young prisoners have been in care¹⁰
- 30% of young single homeless people have been in care¹¹

A summary of the Social Services Inspectorate's own findings is reproduced in Box 1. The Inspectorate found examples of good practice in some local authorities but reported that there were areas where not even the minimum statutory regulations were being

⁵ Social Services Inspectorate, "...When Leaving Homes Is Also Leaving Care..." *An Inspection Of Services For Young People Leaving Care*, Department of Health, 1997

⁶ Biehal, Clayden, Stein and Wade, *Moving On*, HMSO 1995

⁷ I Sinclair and I Gibbs, *Quality of Care in Children's Homes*, University of York, 1996

⁸ L Garnet, *Leaving Care and After*, National Children's Bureau, 1992

⁹ Carey and Stein, *Leaving Care*, 1996

¹⁰ MacLaglin, *Four Years Severe Hardship*, Barnado's and Youth Aid, 1993 (This refers to people who had once been in care but were not necessarily 'care leavers' as defined in Box 2)

¹¹ *The Indentitac Prisoner*, Prison Reform Trust, 1991 (This refers to people who had once been in care but were not necessarily 'care leavers' as defined in Box 2)

followed. The Utting Report referred to this, adding that "*a whole series of reports in the previous decade highlighted concerns about the inadequacy of the support offered to care leavers at this critical stage of transition.*"¹²

Box 1 The Inspectorate's own report

When leaving care is leaving home: The Inspection of Leaving Care Services, Social Services Inspectorate, 1997 :

- some SSDs assumed that to be prepared for leaving statutory care meant changing placement to live in specialist resources. This made foster carers wary of services from leaving care teams
- that even if living with their family or friends, the level of support needed is as great as being in care. Those in supported schemes got excellent support and appreciated it
- there were few opportunities for education and social care and there were missed opportunities relating to health needs. Where there were facilities for information and advice this was welcomed
- there were considerable variations in psychology and psychiatry services available to SSDs
- SSDs had difficulty getting useful agreements with other agencies. Good examples of housing and education schemes tended to be where there was a sympathetic senior manager in the other agency
- too often staff were satisfied if the young person had accommodation and was signing on. Where a team had responsibility for the 16 + year olds they were better able to negotiate schemes and individual packages
- SSDs did not have tracking systems for their care leavers. Where an effort was made in a friendly way to keep in touch, young people were more likely to ask for help when they needed it
- in some SSDs young people had to refer themselves as new cases if they had lost touch
- some SSDs had provided very positive support for counselling for 21 + years, who were able to benefit and understand the reasons they were looked after.

Summary of the SSI report reproduced in the Children Act Report 1995-999, Cm 4579

The Utting Report also noted the views of care leavers. They expressed reservations about being compelled to live independently at 16 or 17 before they were ready, losing relationships with carers and friends, the hazards presented by unregulated lodgings or flats in hard to let areas, the loss of continuous social work support, and not being able to return to care.¹³ The Report expressed particular concern at the volume of anecdotal information about young people ceasing to be looked after at the age of 16, "*which*

¹² The Bibliography at the end of this Paper lists some of these reports, together with others that have appeared since the Utting Report was published.

¹³ These views were expressed in groups from 20 local authorities convened by the organisation, FirstKey (see paragraph 8.60 of the Utting Report)

suggested that some authorities operated informal policies of encouraging premature 'independence'."

The Report's view was that none of the difficulties in dealing with care leavers absolved local authorities from scrupulous consideration of the needs of individuals and attempting to make provision for them:

That provision need not be expensive. It is plain from what young people say themselves that what they most lack is someone trustworthy and resourceful to turn to: a continuing role, in particular, for residential and foster carers, independent visitors and for social work.¹⁴

B. After the Utting Report

A few days after the Utting Report was published, Frank Dobson, then Secretary of State for Health, announced that he would lead a ministerial task force to take forward the recommendations.¹⁵ The next sections outline ensuing developments.

1. Quality Protects

In September 1998 Frank Dobson launched a Government initiative for children's services called Quality Protects.¹⁶ Although this initiative covers all local authority services for children, it contains within it particular elements for care leavers and the current Bill can be viewed as an element of this wider initiative. The Quality Protects programme has the following key elements:

- New national Government objectives for children's services that set out clear outcomes for children and in some instances give precise targets to be achieved
- A major role for local councillors in delivering the programme (in line with guidance issued to them) and, as the corporate parents of looked after children, ensuring that the children receive services of the highest quality
- A requirement that local authorities should submit Quality Protects Management Action Plans (MAPs) setting out how they intend to improve their services, which will be monitored and evaluated annually
- A new Children's Services Grant of £375 million payable over three years, that is: £75 million in 1999/2000, £120 million in 2000/01 and £180 million in 2001/02¹⁷

¹⁴ Utting Report, as above, paragraph 8.63

¹⁵ *Frank Dobson promises action on Utting Report*, Department of Health Press Notice, 19 November 1997

¹⁶ Health Secretary Pledges to Transform Children's Services, Department of Health Press Release 93/288, 21 September 1998

¹⁷ Department of Health Press Notice, 12 April 2000 and Department of Health Quality Protect website: <http://www/doh.gov.uk/quality.htm>

The grants are subject to Parliamentary approval each year and the relevant Special Grant Report is debated in the Standing Committee on Statutory Instruments. Payments under the Children's Services Grant are subject to the achievement of satisfactory MAPs. In 1999-00 the special grant was targeted on six priority areas. These remain priority areas for expenditure in 2000-01. These include as one of the objectives: *Increasing the support for those aged 16-18 living in and leaving care, including steps to prevent inappropriate discharge from care. Department of Health guidance to local authorities says that they should pay particular attention to arrangements for increased support to those who have left care.*¹⁸

In the light of the findings from the evaluation of the first round of Quality Protects MAPs, the Government added two more priority areas on which the children's services grant may be spent in 2000-01.¹⁹ These include one directed at children still in care designed to improve their long-term prospects: *Improving the life chances of looked after children through expenditure on their education and health needs, reducing offending and more and better cultural, leisure and sports opportunities.*

Government guidance says that local authorities should take full account of the needs of black and minority ethnic children who are looked after. They should also pay particular attention to implementing the joint DH/DfEE guidance on the education of looked after children; and to reducing teenage pregnancy and supporting teenage mothers and fathers in the light of *Teenage Pregnancy* (SEU 1999). Expenditure should not substitute for services properly provided by local education authorities and the health service.²⁰

Earlier guidance to local authorities said that the special grant for 1999-00 would be payable only if the Quality Protects MAP provided evidence that the local authority had fully audited its services in relation to the objectives for children's services, and if it set out with evidence how the authority would achieve progress in relation to the six priority areas.²¹ All 150 MAPs were evaluated by SSI Social Care Regions and judged to be acceptable. Grant was therefore paid to all local authorities for 1999-00.

The special grant for 2000-01 will be made only to those local authorities which demonstrate satisfactory progress in implementing the plans set out in the Quality Protects MAP for 1999-00. In particular, satisfactory progress will need to be shown in relation to the six priority areas for grant and in relation to the targets in the Performance Assessment Framework and the National Priorities Guidance; and satisfactory plans for action in 2000-01 in the eight priority areas and plans to secure the Government's objectives for children's services.

¹⁸ Department of Health Circular LAC (99) 33

¹⁹ These may change next year.

²⁰ Department of Health Circular LAC (99) 33

²¹ Department of Health Circular LAC(98)28

The Government's objectives for children's services were announced by Frank Dobson at the launch of the Quality Protects programme in September 1998. They were then included in the *Modernising Social Services* White Paper of November 1998, when the original eight main objectives were increased to eleven. The eleven main objectives remain unchanged from their original version. There are, however, some sub-objectives which are now supported by performance indicators drawn from the Social Services Performance Assessment Framework (PAF) published in July 1999 and by additional Quality Protects Indicators which local authorities will be required to use in Quality Protects Management Action Plans (MAPs). The Government has brought these together in one document called *Government Objectives for Children's Services*.²²

Objectives relating to care leavers are reproduced below:

Objective: To ensure that young people leaving care, as they enter adulthood, are not isolated and participate socially and economically as citizens.

Sub-objectives :

- For young people who were looked after at the age of 16 to maximise the number engaged in education, training or employment at the age of 19. (For the sake of clarity the Government intends to introduce an additional target each year for each cohort of young people.)
- To maximise the number of young people leaving care after their sixteenth birthday who are in still touch with the Social Services Department (SSD), or a known and approved contact, on their 19th birthday. (All the information required by the sub-objectives and performance indicators will be routinely available through the new collection on care leavers. However this collection has only just been introduced. By the very nature of the indicators there is a long lead in time and the first results will not be available until 2002.)
- To maximise the number of young people leaving care on or after their 16th birthday who have suitable accommodation at the age of 19. This information will be available through the new collection on care leavers. First results will be available in 2002.

Indicators

Quality Protects Performance Indicator : The proportion of children looked after on 1 April aged 16 who at the age of 19 are known to have suitable accommodation. ("Suitable accommodation" is defined in the glossary of the document)

Quality Protects Performance Indicator : The proportion of children looked after on 1 April aged 16 with whom the SSD are in contact on their 19th birthday.

²² *Government Objectives for Children's Services*: <http://www.doh.gov.uk/pub/docs/doh/objcssmain.pdf>

PAF Performance Indicator: Employment, education and training for care leavers [joint working]: The proportion of young people looked after on 1 April aged 16 who are engaged in education, training or are employed at the age of 19.

National Priorities Guidance target: Demonstrate that the level of employment, training or education amongst young people aged 19 in 2001/02 who were looked after by Local Authorities in their 17th year on 1 April 1999, is at least 60% of the level amongst all young people of the same age in their area.

2. The Government's Response to Utting

The Government's response to the Utting Report was announced in the House of Commons on 5 November 1998 together with a report of the Government's Response.²³ Like the Utting Report, it covered a wide range of issues relating to children in the public care system. It contained a chapter on leaving care, which said that the Government accepted the conclusion of the Utting Report and was determined to secure a better future for care leavers. The Response amplified the Utting Report's basic recommendation with specific suggestions, such as a requirement for care leavers to have pathway plans mapping their route to independence and a number of proposals that did not necessarily require legislation.

The Government's proposals for care leavers, as summarised in its Response to the Utting Report, are reproduced below. The Government's White Paper on social services, published about the same time also included a commitment to legislate, when Parliamentary time allowed, to create new and stronger duties on local authorities to support care leavers up to at least age 18.²⁴

- Improving the quality of the care system so that young people are better prepared for adulthood
- Legislating when Parliamentary time allows to ensure that the responsibilities of local authorities for care leavers up to the age of 18 and beyond correspond more closely with those of parents (including keeping in touch with more young people after they have left care); and ensuring the responsibility for providing after care is placed on the local authority which has been looking after the young person
- Improving the educational outcomes of looked after young people and encouraging post compulsory education
- Improving services on the ground by promoting the spread and development of specialist schemes for care leavers; and disseminating good practice

²³ HC Deb 5 November 1998 c1011-1023 and *The Government's Response to the Children's Safeguards Review*, Cm 4105, November 1998, chapter 4

²⁴ *Modernising Social Services*, Department of Health, Cm 4169, November 1998

- Developing new arrangements for 16 to 18 year olds, for announcement by April 1999, aimed at developing life skills and clarifying responsibility for financial support so that young people are looked after until they are demonstrably ready and willing to leave care
- Improving assistance to care leavers to obtain suitable and affordable accommodation, including issuing guidance to housing and social service departments on the accommodation needs of care leavers and the support they require to maintain a stable tenancy
- Reducing the incidence of youth homelessness²⁵

3. The Health Select Committee and the Government's Reply

Before the Government's Response to the Utting Report was published, the Health Select Committee had published its own report, in July 1998, on children looked after by local authorities, which also included recommendations relating to children leaving care.²⁶ These endorsed the Utting Report's recommendation for extending the powers of local authorities under Section 24 of the *Children Act 1989* and contained additional points of its own. It was more specific about the extensions to existing legislation that it would like to see and also recommended that statistical information about service provision for, and outcomes of, care leavers should be improved.

The Government's Reply to the Health Committee was published in December 1998. The recommendations and the Government replies relating to care leavers are set out below. The main difference between them is that the Committee wanted to see local authorities' duties to help care leavers extended to age 21 and their powers to help, to age 25 whereas the Government was proposing to initially concentrate on 16 and 17 year olds.

The current care system provides deplorably little support for care leavers (Health Committee Recommendation 89)

142. The Government accepts that too many local authorities fail to provide the level of support which would enable care leavers to make a successful transition to adulthood. At the same time it is also true that many examples can be found of leaving care services, often provided by the voluntary sector in partnership with local authorities, which deliver a high level of personal support to young people; help them with accommodation; advise on education, training and employment; and give direct financial assistance.

143. The Government is intent on improving the life chances of care leavers and on driving up standards in the worst services to the level of the best. To this end we are bringing forward a range of measures to improve the quality of children's experience whilst being looked after; extending the statutory after care

²⁵ *The Government's Response to the Children's Safeguards Review* (see above) paragraph 4.2

²⁶ House of Commons Health Committee, *Children Looked After By Local Authorities*, HC 319 of 1997-98, paragraphs 313 - 316

responsibilities of local authorities; providing additional resources to local authorities to develop services; and issuing guidance on good practice and the need for agencies to work together. These measures are spelt out in more detail in the Government's response to the Children's Safeguards review.

144. Under the terms of the Government's *Quality Protects* programme, services for care leavers are one of six priority areas which will attract the payment of the Children's Services Special Grant. The grant is intended to assist local authorities to increase the support provided for care leavers, including steps to prevent the inappropriate discharge of young people at 16 and 17.

145. The Government's National Priorities for Health and Social Services set an overall objective of promoting and safeguarding the welfare of socially excluded children, and particularly children looked after by local authorities. A specific target has been set for local authorities to demonstrate improvements in the level of employment, training or education among care leavers by 2001/02.

It is clear that in many cases undue pressure is put on young people to cleave care as soon as they are 16, irrespective of how well or badly prepared they may be for independent living so early in their lives. This should be discouraged. (Health Committee Recommendation 90)

146. The Government accepts that too many young people leave care at 16 and believes that they should only leave when they are ready and willing to do so. There has been an increase in the proportion of 16 year olds amongst those aged 16– 8 leaving care in recent years which is almost certainly attributable to an attempt at cost saving.

147. No ordinary parent would turn their children out to fend for themselves at the age of 16 and the Government will be laying great emphasis on the parenting responsibilities of local authorities in taking forward its national campaign to improve the quality of management and service delivery in children services. In doing so we will actively discourage the premature discharge of young people from care and will monitor local authorities' performance in this respect. To support this objective, additional financial resources are being made available.

148. In addition to the range of support outlined above, the Government is developing new arrangements for 16-18 year olds aimed at developing life skills and clarifying responsibility for financial support so that young people are properly prepared for leaving care and have a stage transition to independence.

The social services must not turn their backs on young people when they have left care...We support the proposal by sir William Utting and others that the Children Act 1989 should be amended to convert the discretionary powers contained in Section 24 into duties imposed on local authorities to offer appropriate support to care leavers in the form of services, in-kind assistance and cash. We recommend that this duty should extend to young people up to and including the age of 21, and should exist as a discretionary power up to and including the age of 25, or beyond in exceptional circumstances. The Government should ensure that the resources necessary

to achieve this end are provided. (Health Committee Recommendations 91 and 92)

149. The Government agrees that local authorities should have a commitment to care leavers that extends beyond the point at which they leave care and should continue to support them for as long as they ask for help and are in need. The Government believes that it should initially target resources on the most vulnerable care leavers and to provide assistance where it is most likely to improve a young person's education and employment prospects.

The legislation which provides the framework for local authorities to provide after care services will be further strengthened to replace the current discretionary power to assist under Section 24 of the Children Act with a duty to assess and meet the needs of care leavers up to the age of 18. The Government is also minded to extend this duty up to the age of 21, but must first study the costs, limitation and affordability of doing so before proposing the necessary legislation. Subject to affordability and priorities, consideration will also be given to introducing a power to give assistance to 21 to 24 year olds. The Government will legislate to enable local authorities to assist with expenses connected with a young person's education or training up to the age of 24. We will also legislate to ensure that the placing local authority (rather than the one in which the child is now living) will be responsible for providing (or paying for) aftercare.

We recommend that the Government should take the necessary steps to improve the quality of statistical information available on service provision for and outcomes of care leavers (health Committee Recommendation 93)

150. As part of its commitment to improving the outcomes for care leavers the Government has set the objective of ensuring that young people leaving care, as they approach the age of majority, are not isolated and participate socially and economically as citizens. A target has been established for achieving this objective, and a new statistical collection is planned to monitor local authorities' progress towards this target.²⁷

C. Government Consultation on legislation for care leavers

Proposals for legislation were contained in the Government's consultation document for England, *Me, Survive, Out There? New Arrangements For Young People Living In And Leaving Care*, published by the Department of Health in June 1999²⁸ and a similar one for Wales, *New arrangements for Young People Leaving and Living In Care*, published by the Welsh Assembly in July 1999. This section is based on the English document as the primary legislation will apply to both countries.

²⁷ *Children Looked After By Local Authorities, Government Response To The Second Report Of The Health Committee On Children Looked After By Local authorities: Session 1997-98, Cm 4175, paragraphs 142 – 150 (recommendations 89 – 93)*

²⁸ also available on the Department of Health's website <http://www.doh.gov.uk/scg/leavers.htm>

Separate social services provisions are being developed in Scotland as social services are a devolved matter. A recent Scottish consultation paper on social care in Scotland said that legislation was proposed in Scotland as well:

139. Scottish Ministers have announced that certain resources currently spent by DSS on benefits for care leavers should transfer to local authorities. A Scottish Executive-led working group will consider the detail of how such enhanced local authority funding might be best used for the advantage of these young people.

140. It is important to ensure an element of standardisation throughout Scotland from any proposals which emerge from the working group's deliberations. Ministers propose therefore to amend the Children (Scotland) Act 1995 to permit better regulation for young people formerly looked after away from home by local authorities.

141. Ministers propose also to amend the 1995 Act to enable Scottish local authorities to provide aftercare support to an eligible young person from other parts of the United Kingdom. This parallels measures contained in the Care Leavers Bill currently before the Westminster Parliament in respect of authorities in England and Wales regarding support for young care leavers moving from Scotland.²⁹

Me, Survive, Out there? concentrated on proposals for 16-17 year olds although it also contained a chapter with separate proposals for 18-21 year olds. The aims of the proposals were to encourage more people to remain in care until the age of 18; to provide better preparation and planning for leaving care at 18, or in exceptional circumstances, earlier; to enable personal support to continue after leaving care, with staged moves to independence where appropriate; and to make sure that financial support of young people is linked to appropriate services, without perverse incentive to encourage local authorities to discharge young people prematurely.

The key features of the consultation paper's proposals are reproduced below:

- Local authorities to have a **duty to assess and meet needs** of all eligible 16 and 17 year olds who are in care or care leavers. The duty will rest with the local authority who looked after the young person wherever the young person lives.
- Every young person in care on their sixteenth birthday to have a **pathway plan** mapping out a clear pathway to independence.
- New resources for social services provision of support and assistance for 16 and 17 year olds who are in care or who have left care.

²⁹ Regulating Care and the Social Services Workforce (consultation), Scottish Executive, January 2000 (<http://www.scotland.gov.uk/library2/doc10/rcsw-04.asp>)

- Local authorities to provide all eligible 16 and 17 year olds who are in care or care leavers with **personal and financial support** to meet their needs as identified in their pathway plans. Health and educational needs would be met by the relevant services.
- Young people who are 16 and 17 and have been looked after for more than 3 months (continuously or in aggregate) would be eligible for the new arrangements.
- Young people would not be able to opt out of the new arrangements and claim general benefits. Emergency assistance to be available to prevent those who “run away” becoming destitute.
- Each young person to have a **Young Persons Adviser** who will co-ordinate provision of support and assistance to meet the needs of the young person as identified in their pathway plan. Particular emphasis will be placed on helping the young person into education, training, or employment.
- Separate but linked arrangements for provision of support and assistance to 18-21 year olds through local authority funding and Social Security Benefits.

Box 2 Note about terminology used in *Me, Survive, Out There?*

In care refers to those who are **looked after** by local authorities either through compulsory measures of care (care order or remanded) or accommodated on the basis of a voluntary agreement. **Care leavers** are those who leave care (cease to be **looked after**) between the ages of 16 and 18 and who qualify for advice and assistance under the existing Section 24 of the *Children Act 1989*. This means that the person must be under 21 and have been looked after at some time when aged 16 or 17. (Section 24 is reproduced in full in the next section.)

In support of its proposals, the consultation document provided facts and figures, including some that help to compare the situation of care leavers with that of other 16 and 17 year olds. The Government’s *Report on the Children Act* published in January 2000, which included a description of the consultation document’s proposals on care leavers also provided some statistical information. Put together, the following picture emerges (which supplements the figures given in Part A above):

Every year about 5,000 people aged 16 and 17 year olds leave the care of local authorities. There has been an increasing trend to discharge young people from care early. The proportion of care leavers aged 16 to 18 who leave at the age of 16 increased from 33% to 46% in 1998. The average age at which young people in the population as a whole leave home is estimated to be 22.³⁰ As many as 75% of care leavers leave care with no educational qualifications³¹ compared with 6% for all school leavers.³²

³⁰ *Me Survive...* (as above) page 13. This says that the figures include some 16 year olds who left care to return home.

³¹ See section on the Utting Report above

³² *Me Survive...* (as above) page 15

Of all the young people who left care during the year ending 31 March 1998, half had been looked after for two or more years and a quarter had been looked after for less than 6 months. Nearly half (47%) had been in foster placements. Nearly a quarter were living in children's homes (23%), 17% were already in lodgings or living independently and 6% were with parents during their final placement.³³

A new statistical collection is to be established to follow up the position of care leavers on their 19th birthday. Local authorities will be asked to provide details about the 16 year olds they were looking after on 1 April 1999 and each April thereafter once they reach 19 years old. Authorities are asked to provide information about where each young person is living and about whether they are in education, training or employment. They are asked to compare the outcomes for care leavers with the local outcomes for young people generally.

At the national level the Careers Service currently publishes information about the numbers of young people engaged in education, training or employment. This shows that of young people completing year 11 (basically 16 year olds) in 1998, about two thirds (68%) were in full time education, 9% were in Government supported training, another 9% were in employment outside Government supported training and 7% were not active in the labour market or were active but were not in full time education, training or employment.³⁴

D. Existing Provision for Care Leavers

1. *The Children Act 1989*

In summary, the *Children Act of 1989* gives local authorities where the care leaver lives certain duties and powers in relation to care leavers. The main provisions are contained in Section 24 of the *Children Act 1989*, which is reproduced in full at Appendix 1 of this Paper.

Under Section 24, local authorities have a *duty* to advise, assist and befriend all children they are looking after with a view to providing their long-term welfare, not just their welfare during childhood. The *duty* is to advise and befriend people under 21 who, after the age of 16, were looked after by a local authority or who were cared for in certain other establishments, if they request help and satisfy certain conditions. All people qualifying for advice *may* be given assistance, which may, in *exceptional circumstances*, be in cash.

³³ *The Children Act Report 1995-1999*, Department of Health, January 2000, Cm 4579

³⁴ *The Children Act Report*, as above

Section 24 imports subsections 7-9 of Section 17 of the Act relating to repayment and means-testing of assistance. In summary these say that:

- where assistance is provided, it (or its value if provided in kind) may be unconditional or conditional on repayment (in whole or part)
- the local authority must have regard to the means of the child concerned and each of his parents
- people in receipt of means-tested benefits are not liable to repay assistance.

Assistance *may* include a grant to enable the person who qualifies to meet expenses connected with his education and training or contributing to expenses incurred by him in living near the place where he is or will be employed, seeking employment or receiving education or training. In such cases, the *exceptional circumstances* qualification to cash assistance does not apply; nor can repayment of assistance be required. Grants for education or training may continue beyond age 21 if the course was started before age 21. Where the young person who is being advised and befriended goes to live in another authority, the local authority that is advising and befriending him must inform the new local authority.

Guidance to local authorities on provisions for care leavers is contained in the Department of Health's volumes on the Children Act issued at the time it came into force³⁵ and, more recently, following the Government's Response to the Children's Safeguards Review described above, in a Circular to local authorities.³⁶

Although Section 24 of the Act deals specifically with care leavers, other Sections of the Act could be relevant and Government initiatives on housing and homelessness could also be relevant to them. There are also special provisions for care leavers within the financial support system for students but none of these is directly affected by the Bill.

In particular, under Section 17 of the Act local authorities have the general duty to safeguard and promote the welfare of children (that is those under 18) within their area who are *in need* by providing a range and level of services appropriate to those children's needs. A child is in need if a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by the local authority; b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or c) he is disabled.

Under Section 20 of the Act local authorities have a duty to provide accommodation for children in need where there is no-one to care for them. They also have a duty in relation

³⁵ *The Children Act: Guidance and Regulations Volume 3* chapter 9 (repeated in Volume 4 Chapter 7), Department of Health, HMSO 1991

³⁶ Department of Health, Local Authority Circular LAC (99) 16

to children in need aged 16 and 17 whose welfare is likely to be seriously prejudiced if they do not provide them with accommodation. They also have powers under Section 20 to provide accommodation for young people aged 16-20 in their area if this is necessary to safeguard or promote their welfare.

The Bill will replace the existing Section 24 and add new Sections 24A- 24D. It will also add new clauses at the end of Section 23, which deals with local authorities' duties relating to accommodation and maintenance for children that they are looking after. However, as Section 23 itself is not amended and the new clauses 23A – 23E are not dependent on it, it is not reproduced in this Paper. Similarly, the Bill adds new paragraphs 19A – 19C in Schedule II of the Act, which contains miscellaneous provisions relating to children looked after by local authorities, is not reproduced here as the new paragraphs are independent of the old.

2. Social Security Benefits (by Kim Greener)

a. Introduction

The circumstances in which 16 and 17 year olds can claim benefits are relatively restricted. In particular 16 and 17 year olds are usually excluded from claiming Income Support or Income-based Jobseeker's Allowance but there are certain closely defined exceptions to this rule that enable care leavers (among others) to claim these benefits in certain circumstances. They may also be able to claim Housing Benefit.

As people under 18 are not liable for Council Tax, there is no entitlement to Council Tax Benefit. There may be entitlement to non-contributory, non-means-tested benefits such as Disability Living Allowance, Severe Disablement Allowance and Invalid Care Allowance, but these are not affected by the provisions of the Bill. Similarly, contributory benefits such as contribution-based Jobseeker's Allowance and Incapacity Benefit, for which 16/17-year-olds are unlikely to have sufficient National Insurance contributions, are not affected by the Bill. Entitlement to Working Families Tax Credit and Disabled Person's Tax Credit is also unaffected.

b. Income Support

A 16/17-year-old care leaver who satisfies the usual rules of entitlement for Income Support (for example income and capital rules and working less than 16 hours per week) may qualify if they fall into one of the categories below:

- Sick or disabled people
- Lone parents
- Carers
- Pregnant women who are unable to work, or in the last 11 weeks of pregnancy
- Students in full-time non-advanced education

- Trainees on a course provided by the Training and Enterprise Council (the Local Enterprise Council in Scotland)

Income Support personal allowances for 16/17 year-olds are usually lower than for other groups, but for care leavers a higher rate is payable (currently £41.35 per week).

c. *Jobseeker's Allowance*

16/17 year-old care leavers who do not qualify for Income Support may qualify for income-based Jobseeker's Allowance, providing they are available for and actively seeking work and training (or full-time education). If they are one of a couple with a child, or one of the groups who qualify for Income Support, they can claim Jobseeker's Allowance at any time. Other care leavers will only qualify for a specified period when looking for a job or training after leaving school or college. These are:

- During the "Child Benefit extension period" (a period of about three months after the end of the holiday following the term the child leaves school).
- For a further period of up 8 weeks after leaving care.

d. *Severe Hardship Payment*

Care leavers who do not fall into one of the above categories may be paid income-based Jobseeker's Allowance on a discretionary basis, if they would otherwise suffer "severe hardship"³⁷. In borderline cases, young people subject to a care order have their applications referred to the Under 18s Support Team, based in Sheffield. Where it is decided that there is severe hardship, a severe hardship direction is issued. Severe hardship payments are paid at the same rate as other payments of Jobseeker's Allowance, with a severe hardship direction lasting for a limited period, usually 8 weeks. However, the period may be longer or shorter if the claimant is due to start a training course, work or full-time education. Repeat claims for severe hardship payments can be made, but will be referred to the Under 18s Support team if directions have been in force for 16 weeks and the young person has not been successful in obtaining work or training.

e. *Hardship payments*

Hardship payments (which are different from Severe Hardship Payments) are reduced payments of Jobseeker's Allowance made where Jobseeker's Allowance has been suspended or sanctioned or a claimant is awaiting a decision, and the claimant or a member of his family would otherwise suffer hardship. There are special rules governing sanctions for 16-17 year-olds, which in some ways are more lenient than those for older people.

³⁷ S16 Jobseekers Act 1995

f. Housing benefit

A 16/17 year-old who is liable to pay rent can claim Housing Benefit if they satisfy the usual rules of entitlement (for example income and capital rules).

III The Bill

Apart from clause 6, which deals with social security benefits, the Bill amends the *Children Act 1989*. It applies to England and Wales only, again apart from clause 6, which also applies to Scotland.

A. The Bill as introduced in the House of Lords

The main purpose of the Bill is to strengthen the responsibilities of local authorities towards care leavers. As originally introduced, the Bill concentrated on 16 and 17 year olds, both those in care preparing to leave and those who leave at that age. These and existing provisions remain but during the Bill's passage through the House of Lords, it was amended to introduce new duties towards older care leavers. Box 4 provides a skeleton outline of 1) existing powers 2) the Bill as introduced in the House of Lords and 3) the Bill as introduced into the House of Commons.

The Bill not only strengthens the duties of local authorities towards care leavers aged 16 and 17 years old, but also removes their entitlement to certain social security benefits. Assistance to care leavers in this age group, whether in cash or in kind, will therefore come from local authorities, who will have the duty to assess and meet their needs. The Bill changes the authority responsible from the one in which the young person is living to the one that looked after the young person while s/he was in care.

The definition of those covered by the new arrangements (the details of which are to be settled in Regulations) is likely to be narrower than the group covered by the existing Section 24 of the *Children Act 1989*. This is because Section 24 covers young people leaving institutions other than just local authority care and the group of 16 and 17 year olds leaving local authority care is likely to be more closely defined than care leavers are for the purposes of Section 24.³⁸

Introducing the Bill on Second Reading in the House of Lords, Lord Hunt, Minister at the Department of Health, said that the Bill closely followed the outline of the consultation document (described above). More than 160 organisations, authorities and individuals replied to the consultation and 83% of the responses supported the Government's

³⁸ The Bill's Explanatory Notes (page 2) say that Regulations are likely to prescribe those who have had a minimum spell of 13 weeks in care after the age of 14.

proposals.³⁹ Lord Hunt's outline of the Bill in his introductory speech is reproduced below:

The Bill was "*greatly welcomed*" by Lord Howe on behalf of the Conservative Party. He raised a number of questions but said that the two things that would make or break the proposals were resources and ensuring that the child could trust and take ownership of the new process.⁴⁰ Lord Clement-Jones on behalf of the Liberal Democrats said that they supported a great deal of the Bill but that the contents as it stood were "*not good enough*". He also raised a number of issues, which he said would be raised at the Bill's Committee Stage.⁴¹

Lord Hunt introducing the Bill on Second Reading

...We believe that local authorities' responsibilities towards young people in and leaving care should correspond more closely to those of responsible parents. That means providing support and assistance for children beyond the age of 16. Young people in and leaving care should be able to expect this from their corporate parent. That is why Clauses 1 and 2 of the Bill place new responsibilities on local authorities to assess and meet the care and support needs of children aged 16 and 17 who are in their care or who have left care.

For those who have left care, the local authority that last looked after a child will be responsible for continuing support wherever the young person is living. Responsible local authorities will have a duty to keep in touch with these young people wherever they move to; a duty that will apply beyond 18 up to the age of 21. No longer will local authorities be able to forget their responsibilities to the young people who leave their care.

It is important that young people are helped to prepare and plan for their future to enable them to achieve their aspirations. That is why, from their sixteenth birthday or as soon as they become eligible under the new arrangements, young people in and leaving care will have a pathway plan. The plan will map out a clear pathway to independence and will cover education, training, career plans and the support to be provided by the local authority. Young people will be directly involved in drawing up the plans, as will other interested parties, and the plan will be reviewed regularly to develop with the changing circumstances and ambitions of the young person.

The first three clauses of the bill introduce the duty to provide young people in and leaving care with pathway plans. The duty will apply to all eligible and relevant children aged 16 and 17 who are in care or who have left care and will continue up to the age of 21 (and beyond where the young person is in higher education). The same clauses introduce a parallel duty to provide these young

³⁹ HL Deb 7 December 1999 c1156

⁴⁰ HL Deb 7 December 1999 c1160- 64

⁴¹ HL Deb 7 December 1999 c1164-66

people with young person's advisers. Currently many young people are unaware of the services that are available to them or how to access them and it is essential that under the new arrangements young people receive the support and assistance they need in a co-ordinated and accessible way.

The young person's adviser will provide a single point of contact for the young person, easily contactable in times of crisis or whenever advice is needed and able to put the young person in contact with other specialists such as careers advisers. The adviser will also be responsible for overseeing the pathway plan and ensuring that the young person receives the advice and support to which he is entitled. For the young people who have left care, the adviser will be expected to fulfil the local authority's new duty to keep in touch.

Education and training is one of the best ways to improve a young person's life chances, and we believe that local authorities should encourage and help care leavers continue in education. That is why Clause 4 of this Bill gives local authorities new responsibilities and powers to make support available for care leavers in higher education. Currently, local authorities can assist care leavers

Box 3 Note on Bill Terminology

Eligible children = those in care aged 16 and 17 (power for Regulations to prescribe how long they must have been in care)

Relevant children = those aged 16 and 17 who were eligible children but have now left care (power for regulations to exclude certain groups)

Former relevant children = relevant children who have reached the age of 18 (and care leavers who were still eligible children when they reached their 18th birthday)

with the costs associated with education or training up to the age of 24 only if they started the course before the age of 21. Clause 4 will get rid of this restriction. Young people in this particular group are often ready for higher education later than their peers, so this provision allows local authorities to provide assistance whenever the young person starts the course.

One of the disadvantages faced by care leavers in higher education is having no family to return to for vacations. That is why Clause 4 of the bill also places a new duty on local authorities to assist a care leaver in higher education with vacation accommodation where this is needed.

All these new arrangements for young people in and leaving care will be underpinned by a new financial regime, the foundations of which will be laid by Clause 6 of the Bill. Currently, too many children leave care before they are ready to do so. The proportion of 16 and 17 year olds leaving care at the age of 16 increased from one third in 1993 to under one half in 1998. This trend is alarming and we are determined to reverse it. We believe that one reason for this trend is the perverse financial incentive for local authorities to push children as young as 16 out of care and onto benefits. The new financial arrangements will remove this

incentive and recognised that young people in and leaving care need proper support and guidance, not just cash.

The funds from income support, housing benefit and jobseeker's allowance to which these young people are currently eligible will, therefore, be transferred to a new budget, to be allocated to local authorities to support these young people properly. This budget will be based on local authorities' existing spend on this group, drawing in additional resources from the children's social services special grant, making extra money available to ensure that local authorities are able to fulfil their new duties to this vulnerable group. We want to see local authorities act more like responsible parents towards the children in and leaving their care.

We recognise that at present certain 16 and 17-year olds - such as disabled children and lone parents - are eligible for income support even if they live at home with their parents, recognising that they have special needs. The new financial arrangements will continue to recognise that these groups have special needs. Clause 6 contains provisions allowing the Secretary of State to exempt certain groups from the new financial arrangements and we intend to use this power to ensure that disabled children and lone parents keep their present entitlements to income support.

Taken together these measures add up to a substantial package of support, both personal and financial. We believe that it will make a significant difference to the life chances of these young people, helping them to grow into independence and a rewarding adulthood. But it would be naive to assume that it will always be sweetness and light. Inevitably there will be disagreements and failures.

We anticipate that the involving and empowering aspect of pathway planning will minimise disputes but nonetheless we have to have a robust, swift and sensitive means of dealing with complaints. The Bill provides for regulations to describe the complaints procedure for these young people. We anticipate using the existing machinery but building in additional sensitivity, such as an advocate for the young person. We shall also be monitoring closely how quickly complaints are resolved. Young people do not have the leisure to put their lives on hold while bureaucracies grind slowly through processes. Again, we hope that most complaints will be settled amicably and quickly, but, again, it would be naive to assume that this will always be the case.

There have always been troubled young people who run away from local authorities and it is wise to assume that there always will be. For these young people, we need to make sure that there is emergency provision to pick them up and a support system which is flexible enough to encourage them back on terms which they can accept. For emergencies, these young people will still be eligible for emergency help from any local authority in whose area they fetch up. As now, they may turn up at refuges such as Centrepoint, or at night shelters. Emergency provision will see them through the short time it takes to re-establish contact with their responsible authority.

Our new arrangements are designed to be as responsive as possible to young people disaffected with their local authority, for whatever reason. They can live wherever they choose in the country, and their authority will still be responsible for maintaining them. So there will be no more disputes between authorities about whose budget the young person belongs with. The main point of contact will be the young person's adviser. If the young person wishes, that contact can be minimal and it can be the only contact he or she need have with any local authority. And should that relationship be the root of the problem--even though the young person will have had a major hand in choosing the adviser in the first place--there will be scope for making changes. These measures are intended to ensure that no young person needs emergency support for long; and that where there are problems a solution can be reached as quickly as possible...⁴²

B. Issues raised in the House of Lords

Over 20 specific issues were raised during the debates in the House of Lords. Of these the only ones that resulted in changes to the Bill were those relating to local authorities' duties towards older care leavers. These were introduced by the Government in response to the debates, the Government's position having been from the start that it supported the extension of such duties but that it could not commit the necessary resources before the results of the Comprehensive Spending Review were known. There were no Divisions on these or any other issues. Apart from a couple of clarifying amendment in Committee, all the changes were introduced by the Government at Third Reading.

The dates of the debates on the Bill are set out below:

Second Reading	7 December 1999	c1155-1191
Grand Committee (no Divisions allowed)	10 February 2000	CWH 1-66
Report	9 March 2000	c1243 -1274
Third Reading	22 May 2000	c477-488

Leaving aside the question of ring-fencing, on which the Conservatives and Liberal-Democrats differed, most of the issues raised were supported by the spokesmen of both parties as well as by other speakers. Many of the points raised were attributed to voluntary organisations working with care leavers such as First Key and Barnado's. These had formed themselves into a consortium to promote certain issues in relation to the Bill. The Local Government Association and the Association of Directors of Social Services also raised certain issues. As some of the points raised have been answered and at the time of writing the Library has received no briefings from these organisations for the Second Reading of the Bill, this Paper does not contain a separate section on the views of the various organisations concerned.

⁴² HL Deb 7 December 1999 c1156-9

Issues raised are listed below (in no particular order). They are grouped together by subject in the summary of the debates that follows.

- Whether the duties of local authorities to older care leavers should be included in the Bill
- Whether resources for local authorities to carry out their new tasks would be adequate
- Desirability of ring-fencing the new grant for local authorities
- Whether there should be national minimum standards of financial (and other) assistance
- Whether the time limits for eligibility are too narrow
- Eligibility of unaccompanied refugee children
- Eligibility of disabled children and specific needs of disabled care leavers
- Reviews of Pathway Plans
- Providing a safety net for young people estranged from their Personal Adviser
- Providing independent advocates for young people
- Appropriate complaints procedures
- Monitoring of local authorities' performance
- Training and qualifications of the Personal Adviser
- Ensuring that necessary Regulations are made
- Co-ordination of the Personal Adviser with proposals in the Learning and Skills Bill
- Requiring local authorities to keep children in care until the age of 18
- Whether the phrase 'keep in touch' adequately represents local authority duties
- Ensuring that accommodation for care leavers is "suitable"
- Whether the Bill should refer to 16 and 17 year olds as 'young people' instead of children
- Whether the means-test should apply to parents estranged from their children
- The proposals in relation to Scotland

a. Duties of local authorities to older care leavers

Pressure to extend up to the age of 21 the duty to meet assessed needs and for the introduction of a duty to provide assistance with employment, education and training up to the age of 24 was evident at all stages of the Bill. Both Conservatives and Liberal-Democrats advocated the extension of duties to older care leavers. The Government's Response was that it was not a question of "if" such measures should be introduced but "when". It supported such measures in principle but said that it could not commit

additional resources before announcing the results of the Comprehensive Spending Review.⁴³

On Report, the Government announced that it would be bringing forward amendments on Third Reading relating to these issues. The form that the amendments eventually took was stronger than that suggested on Report in that the new duties were written onto the face of the Bill whereas on Report it appeared that they would take the form of powers to make Regulations to introduce new duties. However, even on Third Reading, when the amendments were passed, Lord Hunt, on behalf of the Government, said that that the measures in the Bill would not necessarily all be introduced at the same time:

We have agreed that we would want to see those duties introduced as soon as possible, but we have so far failed to agree how they should appear in the Bill. The Government's position continues to be that implementation will occur when resources permit and at levels which resources permit, with differential commencements if necessary. In laying the amendment, I must again stress that we cannot anticipate the outcome of the spending review. It would therefore fall to health Ministers to defer implementation or to meet any costs arising from the amendments by reprioritisation within the Department of Health allocation in the event that the spending review did not award sufficient funds for this purpose.

Given that position, which will not come as a surprise to noble Lords, the noble Lord, Lord Laming, offered us a way through our impasse when he spoke in Committee. He pointed out that it is not uncommon for Bills to be passed without a final commitment to a timetable for implementation either for all or part of the Bill. It remains a matter for government to decide when to commence any of the Bill's provisions.

We have listed carefully to the arguments which noble Lords have made repeatedly throughout debates on the issue. Noble Lords are rightly concerned that there should be no shred of ambiguity about the Government's commitment to these young care leavers to ensure that they received the support which will enable them to live fulfilled lives as full members of society. That is why we have decided that the new duties should appear on the face of the Bill to be implemented as soon as we have secured the resources to support them.⁴⁴

At Second Reading the Government had also said that if the new arrangements were extended to 18-21 year olds, they would not be deprived of their entitlement to social security benefits. Lord Hunt said:

However, I must make it clear that, if that were to happen, it would be a top-up on benefit availability, because 18-21 year olds would retain their benefits in

⁴³ See CWH 10 February 2000 CWH c28-35 and c51-54 and HL Deb 9 March 2000 c1248-1254 and 1258-1262 for the debates in the Grand Committee and on Report

⁴⁴ HL Deb 22 May 2000 c481-2

contrast with 16 and 17 year olds, whose benefit entitlement is essentially being transferred from the DSS to the DoH.⁴⁵

The changes that were introduced are now grouped together at new section 23C of the *Children Act 1989*, which would be introduced by Clause 2 of the Bill. These duties apply to former relevant children and include an amendment to ensure that young people who leave at age 18 (and thereby skip the status of *relevant child*) qualify for the new arrangements (now at 23C (b)) Box 3 summarises the definition of former relevant child (as amended). The new duties to former relevant children added in the House of Lords are summarised below. Except where stated, they apply up to the age of 21:

- A duty to provide assistance with expenses associated with employment
- A duty to provide assistance with expenses associated with education and training. This includes the duty to provide assistance until the end of the agreed programme of education or training even if it continues beyond the age of 21 (disregarding reasonable gaps in attendance)
- A duty to provide general assistance to the extent that the welfare of the young person requires it
- A duty to continue to provide a Personal Adviser and Pathway Plan beyond the age of 21 to someone being provided with assistance for education and training by the local authority
- A duty to provide vacation accommodation where necessary to those in an agreed programme of higher education beyond the age of 21

b. Resources and ring-fencing the grant to local authorities

The Government was asked on several occasions about the amount of money that would be available for the new tasks. Lord Clement-Jones on behalf of the Liberal Democrats welcomed the proposal for a ring-fenced grant but Lord Howe on behalf of the Conservatives questioned whether it was desirable to have a ring-fenced grant in that it would remove some discretion from local authorities.

The proposed financial arrangements that are not strictly speaking part of the Bill but support the arrangements in it were explained in more detail in Lord Hunt's winding up speech on Second Reading. Lord Hunt said that the Government intended the new ring-fenced grant to last for one Comprehensive Spending Programme. The Act was expected to come into force in April 2001. The ring-fenced grant would therefore last for one year of the current programme and for another three years. At the end of the period the Government expected to take away the ring-fencing.

⁴⁵ HL Deb 7 December 1999 c1191

On the amount of money available for the grant, Lord Hunt said in the same speech that he was reluctant to say too much because it had been very difficult to estimate the figures. However, he did say that “*essentially we are talking of something in the order of £250 million*”. £200 million of this would come from the amount that local authorities currently spend in this area; another £30 million from the Quality Protects Programme; and £20 million from the transfer of funds from the Department of Social Security. (The speech did not specify whether this was for England only or England and Wales.)

c. Eligibility: time limits, disabled children and unaccompanied asylum-seekers

The question of time limits for eligibility (see Box 3 for meaning of eligibility) was raised several times during the debates. It was given particular emphasis by Lord Howe and was supported by Lord Clement-Jones. He objected to the proposed requirement of a minimum spell of 13 weeks in care after the age of 14 for eligibility, arguing that all children in care should have a needs assessment and benefit from the new arrangements. A briefing by the Local Government Association took the opposite view, arguing that the time limit should be 6, not 3 months.

Lord Howe also suggested that eligibility should be defined fully in the Bill rather in Regulations. The Government argued that Regulations would allow the Government greater flexibility in responding to unanticipated problems. Through its statistical database covering a one third sample of local authorities, the Government would monitor trends in the age of care leavers and the length of time they had spent in care, then make any necessary adjustments.

The Government also argued that it was not appropriate to place a duty on local authorities to support children who might only come into contact with them in passing. Local authorities could use their powers under Section 24 to provide assistance to all care leavers up to the age of 21 and in some cases up the age of 24.⁴⁶

Several speakers made the point that a significant number of disabled young people living away from home would not be eligible according to the Bill's criteria. In particular, those in residential schools who spent the school holidays accommodated by a health authority or local authority were not officially in care but were unlikely to return to their families. This was an issue of particular concern to the Council for Disabled Children.

The Government's response was that the fact that parents sent their child to a residential school did not mean that they abrogated responsibility for those children. For those who had no contact with their families, the powers to help in Section 24 would be applicable in many cases and the Government was developing a range of initiatives, such as the

⁴⁶ HL Deb 10 February 2000 CWH c2-7 and HL Deb 9 March 2000 c1243-5

learning disability strategy, that would provide more appropriate ways of helping disabled young people.⁴⁷

About 25% of existing care leavers are disabled according to the consultation document. The Government said on Second Reading that the special needs of disabled care leavers who are eligible will be covered in guidance.⁴⁸

The position of unaccompanied refugee children was raised on Second Reading by Lady David. She asked the Government to expand the eligibility requirements to include them as many would fall outside the Bill's definition of an eligible child. The Government's response was that these children should be treated in the same way as other care leavers. Where local authorities had taken asylum seekers into care, those children would be fully entitled to the benefits of the new arrangements. In addition, under the Children Act, local authorities had a responsibility to provide services for children in need in their area.⁴⁹

d. Minimum standards of financial assistance and a safety net for care leavers

Lord Howe, supported by Lord Clement-Jones, argued that there should be national minimum standards to provide for the essential needs of 16 and 17 year old care leavers. He pointed out that the Bill would remove their entitlement to the main social security benefits and that the level of support provided by different local authorities varied widely. The Government responded that it intended through guidance to issue minimum standards although it had not yet decided whether the guidance would be statutory or not:

...We shall certainly cover in that guidance services and financial support. It needs careful handling. We may need to identify a suitable benchmark such as the standard of living a young person might have expected from state benefits. I very much take the point of the noble Earl, Lord Howe, that one of the great strengths of the arrangements is that each young person has to be treated as an individual.

Another point raised at Second Reading was that one of the skills that all young people need is how to manage a budget. Everyone will come to that at a different pace. One young person might be perfectly competent to manage his own money, while at the same age another might be barely able to cope with pocket money I am sure that parents would recognised that point. We are asking local authorities to behave more as a responsible parent would towards a child. Minimum standards would need to take account of the range of needs and abilities of the young people we are aiming to help. We would certainly be able to ensure that young people cannot be short-changed under the new arrangements.⁵⁰

⁴⁷ HL Deb 10 February 2000 CWH c 8-13

⁴⁸ HL Deb 7 December 2000 c 1188

⁴⁹ HL Deb 7 December 1999 c1170 and 1191

⁵⁰ HL Deb 10 February 2000 CWH c58-62 (quote c 60-1)

Conservatives and Liberal Democrats also pressed for a safety net of support for young people who fell out with their local authority and personal adviser. This issue was raised by several speakers on Second Reading. Lord Listowel, for example, suggested that care leavers in this position might be worse off than they are now. The amendment in Committee proposed they should still be entitled to some form of social security benefit but the Government argued that this would undermine the principle of the Bill, which was deliberately taking care leavers off benefit. To restore benefit for one group would recreate the perverse incentive that the Government was trying to remove. The only contact that the care leaver needed to maintain in order to receive support from the responsible authority would be with his personal adviser. But emergency support could be provided under Section 17 of the Children Act by whichever authority the child was living in.

On report, the issue was raised again. This time the amendment proposed that local authorities should be placed under a duty to provide a 'safety net' of cash support for care leavers estranged from their authority as the existing Section 17 provision seemed to have resulted in huge variations in practice. The Government responded that it intended to cover the provision of emergency assistance in guidance to local authorities, including the payment, where necessary, of cash.⁵¹

e. Reviews, Complaints, Independent Advocates and the Personal Adviser

The question of the appropriate procedures for reviewing the Pathway Plans was raised in Committee by Lord Listowel. The Government said that it would be making tailor-made regulations in readiness for the implementation of the Bill. The Government proposed that reviews should be at six monthly intervals or more frequently if necessary. The review would involve the Personal Adviser and other interested parties. The details had yet to be settled but the drafts would be published for consultation and the Government intended to consult over the Summer period so that the Regulations would be in place when the Bill was implemented in April 2001.⁵²

The argument for independent and confidential advocacy services for care leavers to be provided for in the Bill was made both in Committee and on Report and was widely support as "*an instrument whose time has come*". The Government said that it was committed in practice to the establishment of such services and was taking a number of other measures to ensure that they were widely available. There was therefore no need to provide for them in this Bill. The Personal Adviser might be an advocate to some extent, in particular in ensuring that the care leaver "owned" his/her Pathway Plan. But the Personal Adviser would not be an advocate in the sense of putting the young person's case uncritically, right or wrong.

⁵¹ HL Deb 10 February 2000 CWH c 54-58 and 9 March c1267-1271

⁵² HL Deb 10 February 2000 CWH c14-15

The Government said that where the relationship between the care leaver and the Personal Adviser broke down, there were "*real problems*". This was where the complaints procedure came in:

We will set out the complaints procedure in the Regulations and we will plan to build in sensitivities such as access for the child to advocacy to pursue his case. Indeed, authorities are already entertaining complaints brought by advocates on behalf of children. If there is any evidence of reluctance on the part of local authorities we shall be happy to revisit the relevant guidance.

The Government planned to publish a consultation paper summarising the issues raised and proposals for addressing them later on in the year. Existing regulations covering complaints procedures for children in care were currently being reviewed and the form of the proposed procedures for care leavers would have to take this into account.⁵³

In response to a proposed amendment on training Personal Advisers in child development, Lord Hunt said that the Government accepted that child development was not adequately covered in social work courses at the moment. It was important to distinguish between the role of the social worker, who would probably take a primary role in relation to assessments, and the Personal Adviser who would have a crucial role to ensure that the arrangements worked and that young people received the support that they needed.

More generally, appropriate training for Personal Advisers would be covered in statutory guidance and the Government would encourage local authorities to draw on a wide range of people as appropriate, including, for example, foster carers. The Government also expected that the General Social Care Council, which would be established under the Care Standards Bill and would set standards of conduct and practice for the whole social care workforce, would in time take responsibility for Personal Advisers.⁵⁴

Co-ordination between the relationship of the Personal Adviser with the ConneXions Adviser was also the subject of a proposed amendment. The Government's response was that in many cases the Personal Adviser would also be the ConneXions adviser but it would also be possible for the Personal Adviser to take a back seat because the ConneXions adviser had special skills to offer. ConneXions would be piloted and one the areas chosen contained a leaving care team providing the kind of support expected from a Personal Adviser so that the Government could ensure that the two worked well together.⁵⁵

⁵³ HL Deb 10 February 2000 CWH c 38- 44 (quote c 43-44)

⁵⁴ HL Deb 10 February 2000 CWH c 15-19

⁵⁵ HL Deb 10 February 2000 CWH c 22-23

f. Duty of local authority to provide accommodation

Lord Listowel proposed amendments in Committee and on Report designed to ensure that local authorities had a duty to continue accommodating young people up to age 18. His argument was that the Government's intention was that 16 and 17 year olds should not be prematurely discharged from care. Yet the Bill did not do that. The Government's response was that the neediest would be under a Care Order anyway that would ensure that they remained in care until the age of 18 unless the Order was discharged by a Court. It would be wrong to insist that young people who were accommodated on a voluntary basis should remain against their wishes. Although the Government hoped that most would stay in care, they had to be allowed some choice.⁵⁶

The suitability of accommodation for those who did leave care was also raised. Lord Hunt said that the Government was determined that local authorities would make available a wide range of suitable accommodation for young people in and leaving care and that decisions on placement and accommodation were not driven by financial considerations. The Bill provided for the Government to issue Regulations about suitable accommodation. There was no question of the Secretary of State not making Regulations relating to accommodation and making them in time for implementation.⁵⁷

g. Ensuring that Government intentions are carried through: Monitoring and Regulations

Cutting across many of the specific issues raised was the question of carrying through the Government's intentions, both in the sense of ensuring that Regulations covering the appropriate points were laid in time and in the sense of ensuring that local authorities did what was expected of them. These concerns were raised particularly in the light of evidence that many local authorities were not providing an acceptable service to care leavers (see Part I of this Paper). The Government's general response to this was:

I recognise that there are concerns that local authorities may not be up to the task, but let me say in the first place that we intend that the Bill should come into operation next April. Local authorities are already implementing arrangements in order to be ready and prepared for its operation. There is no question that we will not produce regulations which will enable those things to happen.

...It is important to recognise the much stronger performance management arrangements that are now in place in relation to local authority social services departments and the development of performance indicators. These will include

⁵⁶ HL Deb 10 February 2000 CWH c23-27 and 9 March 2000 c 1246-8

⁵⁷ HL Deb 10 February 2000 CWH c45-46

indicators on the proportion of care leavers in employment, education and training.

From April this year, the beefed up Social Services Inspectorate will carry out 30 inspections of childcare services every year, so an authority would expect to receive an inspection once every five years. Part of that inspection process will be looking at the service that those local authorities provide for care leavers. The Quality Protects action plans will include information on improvements in services for care leavers, and social services inspectors will monitor progress against national priorities. If local authorities are found not to be performing, powers of direction are available to the Secretary of State. The Local Government Act 1999 also allows for intervention powers.

Looking at the whole package of measures, including the fact that we are able to performance manage local authorities in a much more effective way now than in the past, the regulations and guidance n themselves will give a very clear steer to local government about how we expect the Act to operate...⁵⁸

h. Keeping in touch

Lord Laming introduced amendments in Committee and on Report about the phrase 'keep in touch' used in the Bill to describe some of the duties that local authorities will have towards those who have left care. He argued that it was too weak a term but the Government's response was that this was a term used in several other pieces of legislation and that whatever the term used, the Government would ensure through guidance to local authorities that they knew what was required of them.⁵⁹

i. 'Young People' and 'Children'

There were attempts in Committee and on Report to ensure that the Bill referred to those aged 16 and over as young people, as most of the speakers in the debate were doing. The Government's final response was that it was necessary to be consistent with the *Children Act 1989* as this was what the Bill was amending.⁶⁰

j. The Means-Test

Amendments to ensure that the means of children and parents would be disregarded in certain circumstances were proposed in Committee. The proposals concerned the treatment of Criminal Injuries Compensation Awards and of parents' income when children are estranged from them. The Government's response was that if these issues

⁵⁸ HL Deb 10 February 2000 CWH c21

⁵⁹ HL Deb 7 February 2000 CWH c36-7 and 9 March c1255-1257

⁶⁰ HL Deb 7 February 2000 CWH c 47 and HL Deb 9 March 2000 c 1271-1274

were a problem, it would be possible to deal with them in guidance. However, the Bill did not introduce any changes to the local authority means-test for similar support. Current legislation did not oblige local authorities to require parental contributions from children they were looking after or for assistance under Section 17 or Section 24 (to which the same legislation applied). They might only do so if it was reasonable. If the child received an award as compensation for criminal injury, the Government's view was that the money was capital that should not be taken into account when considering day to day expense.⁶¹

k. Scotland

When questioned about the fact that Clause 6 of the Bill removing benefit entitlement applied to Scotland but that the positive aspects of the Bill did not, the Government explained that social security was a reserved matter and therefore was dealt with at Westminster. (Social services are a devolved matter). The Government explained that:

Existing legislation means that it is not possible for local authorities on either side of the Scottish border to take on responsibility for each other's looked after children. Transitional arrangements, before any Scottish legislation is enacted, will be that English and Welsh children will remain eligible for benefits if they move to Scotland and Scottish children will remain eligible for benefits if they move to England.

Different arrangements will be needed when Scottish legislation is enacted, and the benefits rules in Clause 6 of this Bill come into effect there. That is why this Bill includes a provision at new Section 23A (5) for the Secretary of State to prescribe that children who have been looked after in Scotland but who move to England would have a responsible authority based on where they live in England. This power would be used once Scottish legislation was in place. We anticipate that any Scottish legislation would include a similar provision in respect of English children who move north.⁶²

⁶¹ HL Deb 7 February 2000 CWH c48-50

⁶² HL Deb 10 February 2000 CWH c 65

Box 4: Care Leavers: Local Authority Powers and Duties^{abcdef}

1. Existing Children Act 1989 (Local authorities where the child is currently living)

16-21

duty to advise and befriend and power to provide assistance (duty for those still in care)

21+

power to assist with education/training if course commenced before the age of 21

2. Bill entering the Lords (Local authorities where the child is or was looked after)

16-18

duty to assess and meet the need for advice, assistance and support (including maintenance and accommodation) of care leavers(in and out of care) up to the age of 18; duty to provide a pathway plan and a young person's adviser

18-21

duty to keep in touch and provide a personal adviser; for those in higher education, duty to provide vacation accommodation where necessary; power to assist (with provision for regulations to create a duty to assist)

21-24

power to assist with education and training regardless of the age at which the course was started and, where such assistance given, duty to keep in touch and provide a personal adviser; for those in higher education, duty to provide vacation accommodation where necessary

3. Bill entering the Commons (Local authorities where the child is or was looked after)

16-18

duty to assess and meet the need for advice, assistance and support (including maintenance and accommodation) of care leavers (in and out of care), up to and including the age of 18; duty to provide a pathway plan and a young person's adviser

18-21

duty to keep in touch and provide personal adviser; duty to assist; for those in higher education, duty to provide vacation accommodation where necessary

21-24

if in agreed education or training, duty to assist; duty to keep in touch and provide personal adviser; for those in higher education, duty to provide vacation accommodation where necessary

a The Bill also removes entitlement of care leavers to Income Support, Income-based Jobseeker's Allowance and Housing Benefit, with exceptions to be prescribed.

b Existing powers and duties in Stage 1 above remain and are not repeated at each stage of the above chart.

c A wider group is covered by existing (& remaining) provisions eg those leaving certain institutions other than local authority care are covered by existing provisions.

d Existing means-testing provisions are included in the new provisions.

e The Bill provides for complaints procedures - details to be in Regulations.

f Unless otherwise stated, the age groups listed relate to people up to, but *not* including the upper age.

Appendix 1, Children Act 1989: The Existing Section 24⁶³

Advice and assistance for certain children

24 (1) Where a child is being looked after by a local authority, it shall be the duty of the authority to advise, assist and befriend him with a view to promoting his welfare when he ceases to be looked after by them.

(2) In this Part "a person qualifying for advice and assistance" means a person within the area of the authority who is under twenty-one and who was, at any time after reaching the age of sixteen but while still a child

- (a) looked after by a local authority;
- (b) accommodated by or on behalf of a voluntary organisation;
- (c) accommodated in a registered children's home;
- (d) accommodated
 - (i) by any Health Authority, Special Health Authority or local education authority,- or
 - (ii) in any residential care home, nursing home or mental nursing home, for in any accommodation provided by a National Health Service Trust], for a consecutive period of at least three months., or
- (e) privately fostered

but who is no longer so looked after, accommodated or fostered.

(3) Subsection 2(d) applies even if the period of three months mentioned there began before the child reached the age of sixteen.

(4) Where –

- (a) a local authority know that there is within their area a person qualifying for advice and assistance,
- (b) the conditions in subsection (5) are satisfied; and
- (c) that person has asked them for help of a kind which they can give under this section,

they shall (if he was being looked after by a local authority or was accommodated by or on behalf of a voluntary organisation) and may (in any other case) advise and befriend him.

(5) The conditions are that

⁶³ This includes amendments since 1989, from Sweet and Maxwell's *Encyclopedia of Social Services and Child Care Law*, last updated November 1999

(a) it appears to the authority that the person concerned is in need of advice and being befriended;

(b) where that person was not being looked after by the authority, they are satisfied that the person by whom he was being looked after does not have the necessary facilities for advising or befriending him.

(6) Where as a result of this section a local authority are under a duty, or are empowered, to advise and befriend a person, they may also give him assistance.

(7) Assistance given under subsections (1) to (6) may be in kind or, in exceptional circumstances, in cash.

(8) A local authority may give assistance to any person who qualifies for advice and assistance by virtue of subsection (2)(a) by

(a) contributing to expenses incurred by him in living near the place where he is, or will be employed or seeking employment; or receiving education or training; or

(b) making a grant to enable him to meet expenses connected with his education or training.

(9) Where a local authority are assisting the person under subsection (8) by making a contribution or grant with respect to a course of education or training, they may

(a) continue to do so even though he reaches the age of twenty-one before completing the course; and

(b) disregard any interruption in his attendance on the course if he resumes it as soon as is reasonably practicable.

(10) Subsections (7) to (9) of section 17 shall apply in relation to assistance given under this section (otherwise than under subsection (8)) as they apply in relation to assistance given under that section.

(11) Where it appears to a local authority that a person whom they have been advising and befriending under this section, as a person qualifying for advice and assistance, proposes to live, or is living, in the area of another local authority, they shall inform that other local authority.

(12) Where a child who is accommodated -

(a) by a voluntary organisation or in a registered children's home;

(b) by any Health Authority, Special Health Authority or local education authority; or

(c) in any residential care home, nursing home or mental nursing home, for any accommodation provided by a National Health Service Trust],

ceases to be so accommodated, after reaching the age of sixteen, the organisation, authority or (as the case may be) person carrying on the home shall inform the local authority within whose area the child proposes to live.

(13) Subsection (12) only applies, by virtue of paragraph (b) or (c), if the accommodation has been provided for a consecutive period of at least three months.

14) Every local authority shall establish a procedure for considering any representations (including any complaint) made to them by a person qualifying for advice and assistance about the discharge of their functions under this Part in relation to him.

(15) In carrying out any consideration of presentation under subsection (14), a local authority shall comply with any regulations made by the Secretary of State for the purposes of this subsection.