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Children Bill [HL]

Bill 144 of 2003–04

The genesis of the Bill was the Government's consideration of Lord Laming's inquiry into the death of Victoria Climbié, a child who died at the hands of her carers, having been abused.

The Bill seeks to create clear accountability for children's services, enable better joint working, and secure a better focus on safeguarding children.

In particular, it proposes the establishment of a Children's Commissioner for England, to join the existing Commissioners in Wales, Scotland and Northern Ireland. The Bill also seeks to sharpen the focus on protecting children by local authorities and their relevant partners, such as public health providers, and also proposes strengthening the rules concerning private fostering and amending the law in regard to smacking.

Tim Jarrett

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Summary of main points

Following the death of Victoria Climbié, murdered by those responsible for caring for her following months of abuse, the Government launched a statutory inquiry, headed by Lord Laming, to consider the circumstances surrounding her death, and why the authorities had not responded adequately to the warning signs in the period leading up to her death.

Lord Laming's report of January 2003 provoked the Government to undertake a review of measures to safeguard and protect children, which culminated in the September 2003 Green Paper, *Every Child Matters* and which, in turn, led to the *Children Bill*.

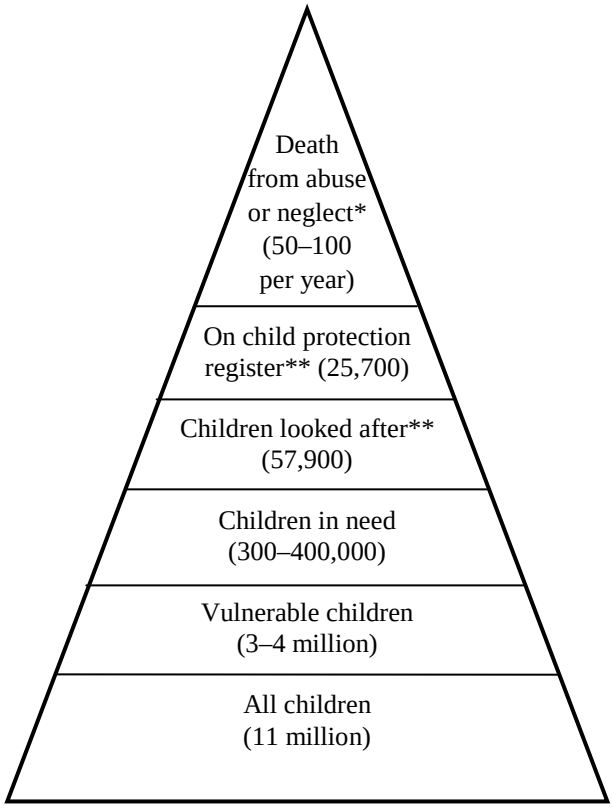
The Bill is in five parts:

- Part 1 concerns the proposed Children's Commissioner. The original proposals were heavily amended during the Lords stages so that now, among other changes:
    - the Commissioner's function is to promote and safeguard the rights and interests of children, rather than to promote awareness of their views and interests;
    - the territorial coverage of the general function is restricted to England;
    - the Commissioner must, rather than may, have regard to the United Nations Convention on the Rights of the Child;
    - the Commissioner has powers to enter premises (other than private dwellings) to interview children who live or are cared for there;
    - the Commissioner can undertake inquiries on his own initiative into the case of an individual child in the UK if it raises issues of public policy of relevance to other children (although matters relating to devolution arise).
- For England and Wales, Parts 2 and 3 provide for improved co-operation between a local authority and its relevant partners (e.g. education, health) as well as the need to safeguard and promote the well-being of children to be taken into account, and allows for information databases to be established. Local Safeguarding Children Boards will be created on a statutory basis, to replace the existing non-statutory Area Child Protection Committees. For England, the Bill proposes that each children's services authority must appoint a Director and a Lead Member, and allows for joint area reviews of children's services;
- Part 4 devolves responsibility for the Court and Family Advisory and Support Service (CAFCASS) in Wales to the National Assembly for Wales;
- Part 5, which applies to England and Wales, contains a number of miscellaneous provisions, including:
    - enhanced private fostering notification and a possible registration scheme;
    - the Secretary of State's powers of intervention in relation to children's services authorities;
    - a duty on local authorities to promote the educational achievement of looked-after children; and,
    - the law in relation to reasonable chastisement (including smacking).

CONTENTS

I Introduction

Victoria Climbié died aged eight years old at the hands of those responsible for caring for her, namely her great-aunt and the boyfriend of her great-aunt.



* These children may not be on the child protection register, nor looked after, nor in need, nor vulnerable.

** These children are not included in the children in need figure, and not all children on the child protection register are children looked after.

Source: Department for Education and Skills, *Every Child Matters*, p15

Sadly, Victoria's case was not unique, and the Government estimates that every year between 50 and 100 children die as a result of abuse or neglect.

The Government ordered a statutory inquiry into the circumstances surrounding Victoria Climbié's death, and why the authorities had not responded adequately to the warning signs in the months leading up to her death.

Lord Laming, who conducted the inquiry, made his report in January 2003 which made 108 recommendations addressed to both central and local government, as well as the provision of public services.

Margaret Hodge, the Minster for Children, Young People and Families said that the "genesis" of the *Children Bill* was the Government's reflection on the Victoria Climbié inquiry report.[1]

In September 2003, the Government published a Green Paper entitled *Every Child Matters*, and the resulting consultation showed "broad support" for its proposals, hence, as the Government explained:

> The Bill has been produced in the light of this consultation and gives effect to the legislative proposals set out in the Green Paper to create clear accountability for

[1] Education and Skills Committee, *Every Child Matters: Next Steps*, 9 June 2004 (hereafter *Ed&Skills Cttee (uncorrected transcript)*), Q7, see: http://pubs1.tso.parliament.uk/pa/cm/cmeduski.htm
Please note, this is a quote from an uncorrected transcript—neither witnesses nor Members have had the opportunity to correct the record—meaning that it is not yet an approved formal record of the Committee's proceedings.

> children's services, to enable better joint working and to secure a better focus on safeguarding children.[2]

Alongside the Bill, the Government published *Every Child Matters: Next Steps*, which, as well as providing details of the responses to the consultation, also set out the wider, non-legislative, elements of change that the Government is taking forward in order to promote the well-being of children. Those issues are not covered in this paper.

To date, the *Children Bill* has completed the following Parliamentary stages:

Stage	Date(s)
House of Lords	
First Reading	3 March 2004
Second Reading	30 March 2004
Committee stage	4, 6, 20, 24, 27 May 2004
Report stage	17, 21, 22 June and 5 July 2004
Third Reading	15 July 2004
House of Commons	
First Reading	19 July 2004

Source: House of Commons Library, *Progress of Bill: Children Bill*, see: http://hcl4.hclibrary.parliament.uk/weblink/bill_index/200304/AC.html#HL35

This paper focuses on the key discussions that took place during the Bill's passage through the Lords stages, together with some views of commentators and a review of the clauses and schedules of the Bill as it stands for Second Reading in the Commons.

[2] *Children Bill: Explanatory Notes*, Bill 144–EN (hereafter *Explanatory Notes*), para 4

II The Victoria Climbié inquiry

A. The death of Victoria Climbié

Victoria Climbié died in hospital on 25 February 2000 aged eight years old, after suffering abuse at the hands of those responsible for caring for her—Marie-Therese Kouao, who was her great-aunt and was entrusted with responsibility for her welfare by her parents when she left her native Ivory Coast, and her partner, Carl Manning,

At the post-mortem examination, there was evidence of no fewer than 128 separate injuries to her body. Dr Nathaniel Carey, a Home Office pathologist, subsequently said that "in terms of the nature and extent of the injury and the almost systematic nature of the inflicted injury, I certainly regard this as the worst I have ever dealt with, and just about the worst I have ever heard of".[3]

Her carers were convicted of murder in January 2001 and sentenced to life imprisonment, and during their trial it became apparent that there had been a significant failure on the part of the authorities to protect Victoria.

B. The inquiry into Victoria Climbié's death

Following the conviction of her foster parents for murder, on 12 January 2001 the then Secretary of State for Health, Alan Milburn, launched a statutory inquiry into Victoria's death. He announced that the inquiry was to be headed by Lord Laming, the former Chief Inspector of Social Services, and would "examine the actions of all the local councils involved in Victoria's case as well as the Police and NHS [National Health Service]". Announcing the inquiry, Mr Milburn said:

> Victoria's death is an appalling tragedy. She was murdered by her 'carers', but was undoubtedly failed repeatedly by the child protection system. We will take all necessary steps to ensure that wherever possible, such failures cannot be allowed to happen again.
>
> We are holding a Statutory Inquiry to look at every aspect of this case. It will incorporate health, housing, social services, local authority and police involvement across the four London Boroughs where services were involved.
>
> I have asked for the Inquiry to report quickly to determine what action should be taken to enhance the protection of vulnerable children. Its report and

[3] Department of Health and Home office, *Victoria Climbié Inquiry Report*, Cm 5730, January 2003 (hereafter *Victoria Climbié Inquiry Report*), p2, para 1.8, see: http://www.victoria-climbie-inquiry.org.uk/finreport/report.pdf

> recommendations will be published in full. All agencies will be required to co-operate fully with this Inquiry.[4]

On 20 April 2001, John Hutton, the Minister of Health, published the terms of reference for the inquiry, which would report jointly to the Department of Health and the Home Office:

- to establish the circumstances leading to and surrounding the death of Victoria Climbié;
- to identify which services were requested, or required, for Victoria by Marie-Therese Kouao and Carl Manning from Local Authorities, Health Bodies and the Police between the time Victoria arrived in England (March 1999) and her death (February 2000);
- to examine the way in which Local Authorities in respect of their Social Services functions, the Health bodies and the Police:
  - responded to those requests, or need for services
  - discharged their functions
  - co-operated with each other
  - co-operated with other services including the local education authorities and the local housing authorities;
- to reach conclusions as to the circumstances leading to Victoria Climbié's death and to make recommendations to the Secretary of State for Health and to the Secretary of State for the Home Department as to how such an event may, as far as possible, be avoided in the future; and,
- to deliver a report of the Inquiry to the Secretary of State for Health and to the Secretary of State for the Home Department, who will then arrange for its publication.[5]

The inquiry considered the actions of the London Boroughs of Ealing, Brent, Haringey and Enfield, who were involved in the case, as were Brent and Harrow Health Authority and Enfield and Haringey Health Authority, as well as the North West London Hospitals NHS Trust (covering Central Middlesex Hospital) and North Middlesex Hospital NHS Trust, and the Metropolitan Police Force.

The Victoria Climbié inquiry was undertaken under powers in section 81 of the *Children Act 1989*, section 84 of the *National Health Service Act 1977* and section 49 of the *Police Act 1996*.[6]

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[4] Department of Health, *Milburn orders inquiry into death of Victoria Climbié*, press release 2001/0028, Friday 12 January 2001, see: http://www.dh.gov.uk/PublicationsAndStatistics/PressReleases/PressReleasesNotices/fs/en?CONTENT_ID=4009915&chk=3iC/ja

[5] Victoria Climbié Inquiry, *Victoria Climbié Inquiry–Terms of Reference Published*, press release, 20 April 2001 (hereafter *Inquiry terms of reference*), see: http://www.victoria-climbie-inquiry.org.uk/News_Update/april.htm#20april2001

Lord Laming announced that he would conduct the inquiry in public, saying that this approach would be "both more effective and fair, and will ensure that matters are dealt with in an open and honest manner", adding that this approach would "serve the interests of vulnerable children best and will ensure the general public can have confidence that tragedies of this kind can be avoided".[7]

The inquiry had two phases: phase one was "mostly backward-looking"[8] and took oral evidence from 158 witnesses, including from the murderers of Victoria, and written evidence from 277 witnesses.[9] Phase two was "forward-looking" and examined "what recommendations might be made to avoid, as far as possible, a tragedy like this happening again".[10] This phase invited submissions from the public, of which more than 250 were received and 77 published by the inquiry, and also organised five seminars which covered the following aspects of working with children: ensuring that children and their families receive the full range of services they are entitled to; making sure that children and families in need of extra care and support are identified at an early stage; carrying out a proper assessment of the needs of children and families and developing plans to achieve the best outcomes for them; making sure that key agencies are able to deliver an effective service; and monitoring the performance of the key agencies.[11]

C. Lord Laming's Report

The findings of the Victoria Climbié inquiry were reported to Parliament on 28 January 2003.[12] Immediately prior to the report's publication, Lord Laming made a speech in which he set out the findings of the inquiry, and in particular the failures of those working with Victoria, their managers, and also the deficiencies in the existing structures to effectively detect and respond to cases of child abuse:

> Whilst it is easy to condemn the poor practice that was so apparent in Victoria's case, it is harder to understand how it could have been allowed to occur. It is with this question that much of the report is concerned. This is important not least because I have concluded that the current legislative framework is fundamentally sound. I am persuaded that the gap is in its implementation. Having considered all the evidence it is not to the hapless front-line staff that I direct most criticism for the failure to protect Victoria. True their performance often fell well short of an acceptable standard of work. But the greatest failure rests with the senior managers and members of the organisations concerned whose responsibility it was to ensure that the services they provided to children such as Victoria were properly financed, staffed and able to deliver good quality

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[6] *Inquiry terms of reference*
[7] *Inquiry terms of reference*
[8] *Victoria Climbié Inquiry Report*, p16, para 2.12
[9] Victoria Climbié Inquiry, *Speech by Lord Laming 25 January 2003*, website, 25 January 2003 (hereafter *Laming Speech*), see: http://www.victoria-climbie-inquiry.org.uk/keydocuments/lordstate.htm
[10] *Victoria Climbié Inquiry Report*, p17, para 2.12
[11] *Laming Report*, p23, para 2.59
[12] See: http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030128/debtext/30128-11.htm#30128-11_spmin4

> services to children and families. The front-line staff were all employees acting on behalf of the organisations which employed them. Those in senior positions carried, on behalf of us all, the responsibility for the quality, efficiency and effectiveness of the services delivered. They must be accountable for what happened. That is why their posts exist.
>
> Alas far too often that simple and easily understood fact was either not understood or not accepted by those in these top positions. Too often they attempted to distance themselves from matters of service delivery. Too often they claimed to be ignorant about what happened at the front door. Too often they attempted to justify their position in terms of bureaucratic activity rather than in outcomes for children. I am in no doubt that this Inquiry Report must have as its primary objective that it will bring about a major change in the way these key public services are managed. No longer should it be possible for senior staff to make a defence for service failure out of what often seemed to be inward looking and self serving procedures.[13]

These problems, however, were not unique to the bodies under investigation in the inquiry; Lord Laming explained that he had found that "many of the concerns identified in Victoria's case are replicated elsewhere in the country", and concluded that the "well-being and safety of children cannot be achieved by one agency acting alone, but will continue to depend upon each of the key agencies fulfilling their distinctive and separate duties". In order to achieve this, he believed that "more exhortation that services should work better together manifestly is not enough. Actual change is required if the safety and welfare of children is not to depend to an unacceptable degree on the personal working relationships of individual professionals".

Lord Laming's report made 108 recommendations,[14] and, in his speech, he provided a summary of the action that he was recommending:

> In order to achieve the level of change I consider to be necessary I advance three basic propositions. First, there must be a fundamental change in the capacity of the management in each of these key public services. No longer should inadequate delivery of services to vulnerable people be tolerated. The performance of each manager, and those in positions of leadership, must be judged by the quality of services delivered at the front door. Second, there must be a clear and unambiguous line of managerial accountability from top to bottom. There should be no hiding place for managers if a tragedy of this kind were to happen again. They must ensure that services are properly funded and adequately staffed to deliver services in a consistent and competent manner. The public need to be reassured that children at risk will be safeguarded. Third, the current arrangements of Area Child Protection Committees, depending as they do on goodwill and best endeavours, should be replaced by a new National Agency for

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[13] *Laming Speech*
[14] See: http://www.victoria-climbie-inquiry.org.uk/finreport/6recommend.htm

> children and families with powers to ensure that all of the key services carry out their duties in an efficient and effective way.[15]
>
> The achievement of these objectives calls for some radical changes. I recommend that, with the support of the prime minister, a ministerial committee for services to children and families be set up at the heart of government. This committee should be chaired by a minister of cabinet rank and be responsible for ensuring that policies, legislation and departmental initiatives affecting children and families are properly considered, financed and co-ordinated.
>
> Reporting to the new ministerial committee should be a new national agency for children and families responsible for advising on policy and practice at a local level and reporting to Parliament on a regular basis on the quality and effectiveness of local services to Children and Families. The Chief Executive of this agency could include the functions of a Children's Commissioner for England.
>
> At a local level every local authority with social services responsibilities should appoint a member committee for children and families and members should be drawn from each of the key services of Education, Police, Probation, Health, Primary Care, Social Services etc.
>
> Reporting to this committee must be a local board of management for services for children and families, chaired by the chief executive and with senior managers from each of the key services. The management board must identify the needs in their area, the resources available to meet those needs and to be accountable for the quality of the outcomes for children.
>
> A director of services for children and families must report to the board on the effectiveness of the services, the flexibility of the ways in which the resources are being used and the effectiveness of the inter-agency collaboration.
>
> I hope that never again will any senior manager or member be able to say "But I did not know. Nobody told me".[16]

In particular, the Health Committee highlighted Lord Laming's remark, which he repeated before the Committee, that he was not seeking an overhaul of the legislation relating to child protection:

> Lord Laming told us that he continued to believe that the Children Act 1989 was "basically sound legislation". His recommendations do not argue for a major new legislative framework. However, he did not believe that the Act was being implemented in the way that had been envisaged for it, and, in his view, there was

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[15] By way of clarification, Lord Laming recommended that Area Child Protection Committees should be replaced by "Management Boards for Services to Children and Families"; see section IV.A.3.a.

[16] *Laming Speech*

> "a yawning gap at the present time between the aspirations and expectations of Parliament and the certainty of what is delivered at the front door".[17]

D. The Government's response to Lord Laming's report

On the same day that the Government published Lord Laming's report, Mr Milburn made a statement to the House in which he presented to the Government's "initial views", adding that the Government would make its "substantive response to the report" as part of the Green Paper on children.[18]

While noting that Lord Laming had considered that the current statutory framework for child protection as set out in the *Children Act 1989* was "basically sound", Mr Milburn said: "I take little comfort from that. Sound legislative policy and guidance is, frankly, useless unless we can be sure that it is implemented effectively and consistently".[19] He added that "If some good is to come out of this tragedy, lasting change must come out of it too. Lord Laming is determined that that is what should happen, and the whole Government share that determination".[20]

As an immediate response to the report, Mr Milburn said that the Government would take some "important steps":

> First … my right hon. Friend the Home Secretary and I are asking the inspectorates responsible for health, police and social services to undertake further joint monitoring of these local services in north London to provide independent assurance that standards are, indeed, improving. Secondly, … I am today writing to all chief executives in local health services and local authorities emphasising their duties towards vulnerable children and the need to reflect them in their budget decisions … Thirdly, the report highlights inadequacies in the training of front-line professionals [which are being addressed] … Fourthly, … I believe that the Laming report re-emphasises the need for new national standards to which all local health and social services can work. I intend to publish the first part of those standards, covering the care of children in hospital, next month and the remaining standards by the end of the year … Fifthly … within the next three months, I intend to secure the replacement of all existing local guidance with new, shorter, clearer guidance that will reach every one of the 1 million professional staff dealing with the safeguarding of children. I also intend to simplify the wider range of Children Act guidance … Sixthly, more than half Lord Laming's recommendations are aimed at correcting repeated failures in basic professional practice. We are today issuing a checklist of those recommendations … Seventhly, … the Home Secretary and I have therefore

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[17] Health Committee, *The Victoria Climbié Inquiry Report*, 25 June 2003, HC 570 2002–03 (hereafter *Health Cttee Report*), p14, para 47, see: http://pubs1.tso.parliament.uk/pa/cm200203/cmselect/cmhealth/570/570.pdf

[18] HC Deb 28 January 2003 c737

[19] HC Deb 28 January 2003 c738

[20] HC Deb 28 January 2003 c741

> asked the relevant inspectorates to supplement their planned joint inspections with a new programme of further visits to verify that those elements of basic good practice are being implemented, particularly where there are concerns about local services. We will also consider whether further powers are needed to intervene earlier and more effectively … Finally, … I am today inviting health and social services, and other local services such as education, to become the first-generation children's trusts. Those pilot children's trusts will mean that local services for children are run through a single local organisation".[21]

The substantive Government response to Lord Laming's report, entitled *Keeping Children Safe*, was published alongside the Green Paper, *Every Child Matters*. As well as the Victoria Climbié Inquiry Report, the Government also took the opportunity to respond to the first report[22] of the joint Chief Inspectors[23] on the arrangements to safeguard children.[24]

The *Keeping Children Safe* document presented tables showing how the Government had responded to the recommendations of Lord Laming and the joint Chief Inspectors. The Government noted that "The reports show that the legislative framework for safeguarding children set out in the Children Act 1989 is basically sound. However, there are serious weaknesses in the way in which it is interpreted, resourced and implemented".[25]

The Government said that it was going to increase investment in prevention and early intervention, which it said should reduce the number of children being harmed in the long-term, and in the short-term might "uncover unmet needs" relating to serious cases like that of Victoria Climbié. In addition to extra financial resources, the Government said that "by raising the priority given to safeguarding children within all organisations, by giving a wider range of organisations and professionals greater responsibilities to provide support, and by helping practitioners and their managers to work together better, children should be better safeguarded, and the lessons learnt from Victoria's death".[26]

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[21] HC Deb 28 January 2003 cc739–740

[22] In its 1998 White Paper, *Modernising Social Services: Promoting independence, improving protection, raising standards* (Cm 4169), the Government said its chief inspectors of services would produce a single report on children's safeguards every three years "or more often if required" (p52, para 3.23).

[23] The report drew upon the work of the former Social Services Inspectorate (SSI); the Office for Standards in Education (OFSTED); the former Commission for Health Improvement (CHI); Her Majesty's Inspectorate of Constabulary (HMIC); Her Majesty's Inspectorate of Probation (HMIP); Her Majesty's Magistrates' Courts Service Inspectorate (HMMCSI); Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI); and, Her Majesty's Inspectorate of Prisons (HMIP).

[24] Department of Health, *Safeguarding Children: A Joint Chief Inspectors' Report on Arrangements to Safeguard Children*, October 2002, see: http://www.dh.gov.uk/assetRoot/04/06/08/33/04060833.pdf

[25] Department for Education and Skills, Department of Health and Home Office, *Keeping Children Safe*, Cm 5861, September 2003 (hereafter *Keeping Children Safe*), p2, para 7, see: http://www.dfes.gov.uk/everychildmatters/pdfs/KeepingChildrenSafe.pdf

[26] *Keeping Children Safe*, p26, para 123

III Part 1: Children's Commissioner

Part 1 of the Bill concerns the establishment of a Children's Commissioner for England, which is the only country in the United Kingdom to not yet have such a post.

A. Children's Commissioners elsewhere in the UK

1. The Children's Commissioner for Wales

Wales was the first country of the UK to have a Children's Commissioner—Peter Clarke took up the post in March 2001.

The post was established by section 72 of the *Care Standards Act 2000*, although the *Children's Commissioner For Wales Act 2001* substantially amended the 2000 Act in respect of the Commissioner. The amendments followed the recommendations made by the National Assembly for Wales's (NAfW) Health and Social Services Committee in its report, *A Children's Commissioner for Wales*, which was published in May 2000.[27] The 2001 Act broadened the post's remit and set out its principal aim, which is to safeguard and promote the rights and welfare of children in Wales.[28]

The NAfW subsequently passed the *Children's Commissioner for Wales (Appointment) Regulations 2000* (SI 2000/3121) and the *Children's Commissioner for Wales Regulations 2001* (SI 2001/2787),[29] which made provision in relation to the functions of the Children's Commissioner for Wales, as well as the commencement order for the 2001 Act.[30]

The first annual report of the Children's Commissioner for Wales set out the remit and powers of the post:

> The Children's Commissioner for Wales Act 2001 set out the principal aim and widened the Commissioner's role by:
>
> - giving a power to review the effect of policies, and delivery of services to children
> - extending the Commissioner's remit well beyond services directly provided for children, such as social care, health and education, to

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[27] *Children's Commissioner For Wales Act 2001*, Explanatory Notes, para 3, see: http://www.legislation.hmso.gov.uk/acts/en/2001en18.htm

[28] Children's Commissioner for Wales, *2002 – 2003 Report & Accounts*, p3, see: http://www.childcom.org.uk/publications/annual%20report%2003%20-%20english.pdf

[29] See: http://www.legislation.hmso.gov.uk/legislation/wales/wsi2000/20003121e.htm and http://www.wales-legislation.hmso.gov.uk/legislation/wales/wsi2001/20012787e.htm

[30] See: http://www.wales-legislation.hmso.gov.uk/legislation/wales/wsi2001/20012783e.htm

include areas such as transport, the environment, economic development and agriculture.

The powers also cover policies and practice of the National Assembly itself.

The Children's Commissioner can consider, and make representations to the Assembly about, any matter affecting the rights or welfare of children in Wales. This means that he can deal with issues such as Home Office run Juvenile Offenders institutions, the Family Court and benefits - matters not within the remit of the National Assembly for Wales.

The powers of the Commissioner are designed to be sufficient for him to act as an informed champion of children and their rights. They include authority to give advice and guidance to children, and a requirement to ascertain the views of children and young people.

The Commissioner can examine the case of a particular child or children if it involves an issue that has a more general application to the lives of children in Wales and can require an agency or person acting on their behalf to provide information. He can also require the attendance of witnesses who then give evidence on oath. Such an examination by the Commissioner will usually only happen when all other routes have been exhausted.

The post was set up with a strong emphasis on a power to influence, and to help change the culture in which children grow in Wales. This cultural change will be within organisations, and within local communities as well as in Wales as a nation. As with other initiatives, such as the NAfW's Framework for Partnership, Extending Entitlement and Llais Ifanc/Young Voice, the creation of the role shows the emphasis placed on establishing ways for young people to participate meaningfully in decisions that affect them.

The Commissioner must have regard to the United Nations Convention on the Rights of the Child in everything he does. Children's rights underpin all his team's activities, and the main way in which those rights will be realised in Wales is through active participation. This will empower young people and enlighten adults whose work and attitudes affect them.[31]

2. The Commissioner for Children and Young People for Northern Ireland

The Northern Ireland Commissioner for Children and Young People is Nigel Williams, who took up his post in October 2003.[32] The legislation which established the post was the *Commissioner for Children and Young People (Northern Ireland) Order 2003* (SI

[31] Children's Commissioner for Wales, *2001 – 2002 Report & Accounts*, p3, see: http://www.childcom.org.uk/publications/annual%20report%2002%20-%20english.pdf

[32] See: http://www.communitycare.co.uk/articles/article.asp?liarticleid=41306&liSectionID=22&sKeys=children+commissioner+ireland&liParentID=26

2003/439 (N.I. 11)).[33] The order states that "the principal aim of the Commissioner in exercising his functions under this Order is to safeguard and promote the rights and best interests of children and young persons".

The Commissioner's website states that

> While the detailed powers are set out in the legislation they can be grouped under three main areas of work:
>
> 1. **Promoting children's rights** – the Commissioner will be guided by the UN Convention on the Rights of the Child an international agreement setting out how children should be treated and the rights that they have. The Commissioner hopes to develop lots of fun ways of communicating with young people and encouraging their participation in decisions.
>
> 2. **Complaints and Legal action** – the Commissioner can deal with individual complaints from children and young people, or their parents/guardians about government services like education, health, adoption and fostering, youth justice, road safety – indeed any service that impacts on those under 18 [although the Commissioner can help those with a disability, and those leaving care, up to the age of 21]. The Commissioner has to take account of any existing complaints mechanism first. Where appropriate the Commissioner can start or take over legal proceedings on behalf of a child or young person if a general principle is at stake
>
> 3. **Research and Inquiries** – the Commissioner wants the Office to base all its work on helping children and young people on thorough research. The Commissioner will be working with universities and other agencies to achieve this. The Commissioner has the power to undertake general inquiries into issues where he believes children are being adversely affected. This may be an informal inquiry or more formal with the powers of the High Court to summons witnesses, obtain documents and enter premises. He can also respond to request from the Assembly and Parliament to look at issues. The Commissioner is also required to review the ways that those providing services for children listen to complaints and take account of children's views.[34]

3. The Commissioner for Children and Young People for Scotland

The *Commissioner for Children and Young People's (Scotland) Act 2003* is the legislative basis for the post, which was taken up by Professor Kathleen Marshall in April 2004.[35]

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[33] See: http://www.northernireland-legislation.hmso.gov.uk/si/si2003/20030439.htm

[34] Northern Ireland Commissioner for Children and Young People, *What NICCY can do*, see: http://www.niccy.org/functions/

[35] See: http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-04/sor0212-02.htm and

Section 4 of the Act states that the "general function" of the Commissioner is "to promote and safeguard the rights of children and young people", and section 5 states that the Commissioner "must have regard to any relevant provisions of the United Nations Convention on the Rights of the Child".

The Scottish Executive explained that:

> The Commissioner for Children and Young People's Act received Royal Assent on 1 May 2003 and provides the legislative basis for the appointment of Scotland's first Commissioner for Children & Young People.
>
> The general function of the Commissioner for Children & Young People in Scotland will be to promote and safeguard the rights of children and young people. To achieve this, the Commissioner will:
>
> - generate widespread awareness and understanding of the rights of children and young people;
> - consider and review the adequacy and effectiveness of any law, policy and practice as it relates to the rights of children and young people;
> - promote best practice by service providers;
> - commission and undertake research on matters relating to the rights of children and young people.
>
> The Commissioner will not be responsible for investigating cases relating to the rights of and provision of services for individual children, for which there are established procedures, through existing statutory agencies and, ultimately, the Courts.
>
> The Commissioner will be independent of the Scottish Executive and Parliament and will be appointed by HM The Queen on the nomination of the Parliament. He/she will be accountable through a duty to report, at least annually, on the exercise of his/her functions, to the Scottish Parliament.
>
> The budget for the post will be provided by the Scottish Executive although the Commissioner will be a Parliamentary appointment. A cross party panel of MSP's [Members of the Scottish Parliament] will undertake the appointment process with the input and involvement of young people in the process. The Parliament is aiming to appoint a Commissioner by the end of 2003. On appointment the commissioner will be responsible for the establishment and staffing of his/her own office.[36]

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http://www.communitycare.co.uk/articles/article.asp?liarticleid=43721&liSectionID=3&sKeys=children+commissioner+ireland&liParentID=2

[36] Scottish Executive, *Children's Commissioner*, website, see: http://www.scotland.gov.uk/about/ED/CnF/00017842/Commissioner.aspx

B. Recent debate concerning a Children's Commissioner for England

The Children's Rights Alliance for England (CRAE) highlighted the various calls from prominent bodies for a Children's Commissioner for England over the past decade:

> Various events over the last half decade have led to serious political and public debate about children's need for a powerful watchdog:
>
> - In 1995 the UK Government presented its initial report on implementation of the UN Convention on the Rights of the Child to the Committee on the Rights of the Child: the UK's failure to establish independent mechanisms to support and protect children's human rights was severely criticised by the Committee;
> - The Gulbenkian Foundation's Inquiry into Effective Government Structures for Children recommended in 1997 that an Office of Children's Rights Commissioner should be established: an NSPCC-commissioned opinion poll for the Inquiry found overwhelming public support for an independent office for children (85% support in all age groups; 97% of 15 to 24-year-olds supported [the] proposal);
> - The Health Select Committee in its examination of health services and care for looked after children concluded in 1998 that a Children's Rights Commissioner should be established;
> - In [both] July 1999 and May 2000 a Ten-minute Rule Bill was presented to Parliament to 'establish a children's rights commissioner to promote the rights and interests of children in England': this was a symbolic action to raise awareness of the need for such an independent body among politicians;
> - The devolutionary process led first to the appointment of a Children's Commissioner for Wales (took up post in April 2001). Northern Ireland's Commissioner for Children and Young People then took up post in October 2003; and the appointment of Scotland's Commissioner was announced in February 2004;
> - The establishment of the Disability Rights Commission in April 2000 set an important precedent for independent rights-based bodies for groups whose human rights are infringed;
> - In 2001 the Final Report of the Bristol Royal Infirmary Inquiry, into the management of care of children receiving complex heart surgery, recommended that "Consideration should be given to the creation of an office of Children's Commissioner in England, with the role of promoting the rights of children in all areas of public policy and seeking improvements to the ways in which the needs of children are met".[37]

Article 4 of the United Nations' Convention on the Rights of the Child (UNCRC) states that: "States Parties shall undertake all appropriate legislative, administrative, and other

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[37] Children's Rights Alliance for England, *Children's Rights Commissioner*, website, see: http://www.crae.org.uk/commissioner/commissioner.html

measures for the implementation of the rights recognized in the present Convention".[38] In a general comment relating to article 4, the United Nations' Committee on the Rights of the Child (CteRC) said:

> Independent national human rights institutions (NHRIs) are an important mechanism to promote and ensure the implementation of the Convention, and the Committee on the Rights of the Child considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children's rights. In this regard, the Committee has welcomed the establishment of NHRIs and children's ombudspersons/children's commissioners and similar independent bodies for the promotion and monitoring of the implementation of the Convention in a number of States parties.[39]

The CteRC added that it was its view that "every State needs an independent human rights institution with responsibility for promoting and protecting children's rights. The Committee's principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children's rights".[40]

Whilst welcoming the establishment of a Children's Commissioner for Wales and plans for similar posts in Northern Ireland and Scotland, the CteRC said that it was "deeply concerned that the State party has not yet established an independent human rights institution for children in England".[41]

The issue of a Children's Commissioner for England arose again in the latest assessment, in 2002, by the CteRC of the United Kingdom's achievement of its obligations under the UNCRC.[42]

The CteRC recommended that "independent human rights institutions with a broad mandate and appropriate powers and resources" should be set up in each country of the

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[38] United Nations, *Convention on the Rights of the Child*, website, see: http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm

[39] United Nations (Committee on the Rights of the Child), *General Comment No. 2 (2002): The role of independent national human rights institutions in the promotion and protection of the rights of the child*, 15 November 2002 (hereafter *CteRC General Comment*), p1, para 1, see: http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/ec1dcd23712e20a8c1256c4f0034fd50/$FILE/G0245736.pdf

[40] *CteRC General Comment*, p2, para 7

[41] United Nations Committee on the Rights of the Child, *Concluding observations: United Kingdom of Great Britain and Northern Ireland*, CRC/C/15/Add.188, 9 October 2002 (hereafter *CteRC UK Observations*), p5, para 16, see: http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/2f2744b7e0d015d6c1256c76004b3ab7/$FILE/G0245381.pdf

[42] The Convention on the Rights of the Child came into force in the UK on 15 January 1992. To allow monitoring of implementation, article 44(1) of the Convention requires State Parties to report to the UN on their progress against the Convention two years after ratification, and every five years subsequently. The UK's latest report was submitted in 1999 and was examined by the UNCRC in 2002; see: http://www.cypu.gov.uk/corporate/childrights/index.cfm

UK and across the UK as well to "to monitor, protect and promote all the rights of the Convention for all children. They should be easily accessible to children, able to determine their own agenda, empowered to investigate violations of children's rights in a child-sensitive manner and ensure that children have an effective remedy for violations of their rights".[43]

In response, the Government said that while it was "monitoring closely developments in the Devolved Administrations to see what lessons their experiences have for us", it argued: "There are already a range of mechanisms in place to promote and protect children's interests in England and we need to be convinced that any new structures will make a real difference to the lives of children and young people".[44]

In his report, Lord Laming called for the establishment of a "National Agency for Children and Families", and the role of its chief executive "should incorporate the responsibilities of the post of a Children's Commissioner for England".[45] Lord Laming said that the Agency should:

- assess, and advise the Children and Families Board about, the impact on children and families of proposed changes in policy;
- scrutinise new legislation and guidance issued for this purpose;
- advise on the implementation of the UN Convention on the Rights of the Child;
- advise on setting nationally agreed outcomes for children and how they might best be achieved and monitored;
- ensure that policy and legislation are implemented at a local level and are monitored through its regional office network;
- report annually to Parliament on the quality and effectiveness of services to children and families, in particular on the safety of children; and,
- at its discretion, conduct serious case reviews or oversee the process if this task is carried out by other agencies.[46]

In its May 2003 report entitled *The Case for a Children's Commissioner for England*, the Joint Committee on Human Rights (JCHR) concluded that "existing arrangements for the promotion and protection of children's rights and interests are insufficiently independent from Government to ensure that the rights and interests of all children in England are fully protected and promoted at all times".[47]

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[43] *CteRC UK Observations*, p5, para 17(a)

[44] Children and Young People's Unit, *Briefing on Report from UN Committee on the Rights of the Child*, see: http://www.cypu.gov.uk/corporate/newsandevents/unresps.doc

[45] *Victoria Climbié Inquiry Report*, recommendation 2, p371

[46] *Victoria Climbié Inquiry Report*, p371, recommendation 3

[47] Joint Committee on Human Rights, *The Case for a Children's Commissioner for England*, 12 May 2003, HC 666/HL 96 2002–03 (hereafter *JCHR CCom Report*), p8, para 14. See: http://pubs1.tso.parliament.uk/pa/jt200203/jtselect/jtrights/96/96.pdf

Having taken oral evidence from Paul Boateng, the then Minister for Children and Young People, the Committee summarised what it believed to be the issues that the Government needed to be convinced about:

- would the creation of a Commissioner add value to existing mechanisms for the promotion and protection of children's rights?
- can the Commissioner's role be defined with sufficient accuracy?
- would the office of the Commissioner have the resources to live up to the expectations placed on it? Or to put it another way: are we prepared to pay what is needed for an effective commissioner, and does that represent value for money?
- would it be able to do enough to achieve systemic change?
- would its existence encourage others not to acknowledge their responsibilities to achieve change?[48]

After weighing up the arguments for and against delaying the establishment of a Children's Commissioner for England, the JCHR concluded "the Government's arguments for further delay do not carry conviction", recommending that "the Government declare now its commitment to the principle of establishing a children's commissioner for England".[49]

The JCHR set out its vision for the Children's Commissioner for England:

> We recommend the establishment of a children's commissioner who would be a champion for the children of England, independent from but working closely with central government and other agencies. The commissioner would use the principles of the [UN]CRC as a guide and measure in considering delivery of services to children by government and public authorities, and would involve children as much as was appropriate in its work. The commissioner would pursue children's interests by promotion, advocacy and investigation. The commissioner would carefully select issues for investigation where it was felt these could make a difference to children, in partnership with NGOs [Non-Governmental Organisations], experts and service providers. The commissioner should not be empowered to investigate complaints from individual children but would be able to work with existing advice and assistance services maintained by other organisations to monitor policy implications of issues raised by children.
>
> We favour a separate, identifiable champion for children. The work of the commissioner should be grounded in the UN Convention on the Rights of the Child, but it is clear that those who advocate the establishment of this office want it to go wider than a purely rights-based approach, operating as a spur to better

[48] *JCHR CCom Report*, p6, para 6
[49] *JCHR CCom Report*, p17, para 43

> coordination of children's services and an advocate within Government of the child's viewpoint.[50]

The Government's response to the Committee was pre-dated by the publication of its *Every Child Matters* Green Paper in September 2003, in which it announced that the post of Children's Commissioner would be created and set out the framework for the post:

> To ensure children's and young people's voices are effectively heard, the Government intends to legislate at the earliest opportunity for the appointment of a statutory Children's Commissioner. The Commissioner would act as a children's champion independent of Government, and would speak for all children but especially the disadvantaged whose voices are too often drowned out. The Commissioner would advise Government and also engage with others, such as business and the media, whose decisions and actions affect children's lives.
>
> The Commissioner would develop effective ways to draw on children's views, locally and nationally, and make sure they were fed into policy making. The Commissioner would test the success of policies in terms of what children think and experience. It is essential that the Commissioner does not become dominated by responding to numerous individual complaints and retains its strategic focus. Its role will be to work with the relevant Ombudsman and statutory bodies to ensure children have quick and easy access to complaints procedures that work. The Commissioner would only investigate individual cases where the issues have a wider relevance to other children, as directed by the Secretary of State.
>
> To ensure independence, the Commissioner would have the duty to report to Parliament through the Secretary of State for Education and Skills. The Commissioner would report on progress against the outcomes for children, as a result of action by Government and others, drawing on but going wider than the reports arising from joint inspections of children's services.[51]

The Government subsequently noted that "The proposal for a Children's Commissioner for England to report on how children's outcomes are improving was widely welcomed".[52] The Government reported that respondents to the Green Paper consultation had, in particular, highlighted several factors in relation to the proposed Children's Commissioner:

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[50] *JCHR CCom Report*, p17, paras 44–45

[51] Department for Education and Skills, *Every Child Matters*, Cm 5860, September 2003 (hereafter *Every Child Matters*), p79, paras 5.50–5.52, see: http://www.dfes.gov.uk/everychildmatters/pdfs/EveryChildMatters.pdf

[52] Department for Education and Skills, *Every Child Matters: Next Steps*, March 2004 (hereafter *Every Child Matters: Next Steps*), p14, para 2.5, see: http://www.dfes.gov.uk/everychildmatters/pdfs/EveryChildMattersNextSteps.pdf

- most responses said that the Children's Commissioner should be "fully independent with the ability to enforce change and hold the Government to account", and a number suggested that the Commissioner should report direct to Parliament;
- the "majority" of voluntary sector responses from the suggested the Children's Commissioner could be established with reference to the UNCRC (as with the other Commissioners in the UK);
- "some" respondents felt that the Commissioner should have statutory powers to deal with the youth justice system;
- "a number of responses" argued that the Commissioner should "have a role in overseeing the changes to agencies in delivering children's services"; and,
- "in general", children and young people were clear that they should be involved in the selection process of the Commissioner.[53]

Explaining the Government's new stance on a Children's Commissioner, Margaret Hodge said it seemed to her "completely and utterly and totally logical that if we were going to put children at the heart of everything we need to do we had to give them a strong independent voice to promote their interests. You could not have it without".[54]

C. The Bill's proposals for the Children's Commissioner

In the *Every Child Matters* Green Paper, the Government proposed that the Children's Commissioner would "act as a children's champion independent of Government, and would speak for all children but especially the disadvantaged whose voices are too often drowned out".[55]

In particular, the Bill, as presented at Second Reading in the House of Lords, proposed in clause 2 that the Children's Commissioner had "the function of promoting awareness of the views and interests of children in the United Kingdom", and "may have regard to the United Nations Convention on the Rights of the Child". In addition, clause 4 would allow the Children's Commissioner to undertake inquiries, but only at the direction of the Secretary of State.

Earl Howe, the Opposition Spokesperson for Health, commented: "In the Green Paper we were promised a 'Children's champion, independent of government'. A champion is surely a person who can take up a cause and fight for it both freely and powerfully. That is not quite what we appear to have got in the Children's Commissioner as currently proposed".[56] Lord Northbourne went further, saying that the Children's Commissioner as

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[53] Department for Education and Skills, *Analysis of Responses to the Green Paper 'Every Child Matters'*, p31, paras 42–44, see: http://www.dfes.gov.uk/everychildmatters/pdfs/FinalReport030304.pdf
[54] *Ed&Skills Cttee (uncorrected transcript)*, Q66
[55] *Every Child Matters*, p79, para 5.50
[56] HL Deb 30 March 2004 c1216

proposed in the Bill presented for Second Reading in the Lords would create "a castrated Children's Commissioner".[57]

Commenting on the Bill as it was originally drafted, Peter Clarke said:

> I have concerns about the independence of the office that is being proposed and the fact that the power to investigate is dependent upon instruction from the Secretary of State for Education. That seems to me to be a serious compromise of the full independence of the office. Secondly, the powers in general seem to me to be very weak compared to the other models within the United Kingdom and indeed within Europe. The powers seem to be confined in the main to researching issues around children's views and participation whereas my colleagues can speak for themselves but at least I have powers to review, to make recommendations and to monitor the outcome of those recommendations and to require anyone providing a service in devolved areas to children to give me any information that I require in undertaking such a review. I am seriously concerned that no such powers seem to be in the Bill for the proposed English Commissioner. The third point I would like to make is that I am also concerned about the fact that the English Commissioner only may take into account the UN Convention on the Rights of the Child whereas I am required to, and I believe that such a rights-based approach is both implicit in the Paris principles which are applied to most independent human rights institutions for children and I have found it a considerable boon and benefit and guide to my work.[58]

In evidence dated 29 March 2004 to the JCHR, Lena Nyberg, the President of the European Network of Ombudspersons for Children, stated that the Bill, as presented to the Lords for Second Reading, "appears to fall short of the relevant international standards in a number of ways", concluding that "from a quick consultation with member-institutions, it appears that the legislation currently before your Parliament does not meet the criteria for membership of the Network, nor its Standards".[59]

D. Consideration of the Bill

1. Establishing the post

a. Lords consideration

Clause 1 creates the office of Children's Commissioner, to which Schedule 1 gives effect.

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[57] HL Deb 30 March 2004 c1279

[58] Joint Committee on Human Rights, *Children Bill*, 20 April 2004, HC537-i/HL95 2003-04 (hereafter *JCHR Children Bill*), see: http://pubs1.tso.parliament.uk/pa/jt200304/jtselect/jtrights/95/4042001.htm

[59] Joint Committee on Human Rights, *Scrutiny of Bills: Fifth Progress Report*, 20 May 2004, HC 603/HL 93 (hereafter *JCHR Fifth Progress Report*), p57, Appendix 1, see: http://pubs1.tso.parliament.uk/pa/jt200304/jtselect/jtrights/93/9302.htm

Schedule 1, which makes provision concerning the status, general powers, appointment, and remuneration of the Children's Commissioner, was amended during the Lords stages to introduction a new paragraph to provide protection for the Children's Commissioner from defamation actions. The rationale for the Government-moved amendment was explained by Baroness Ashton, the then Parliamentary Under-Secretary of State at the DfES, who said that it would give the commissioner qualified privilege for all inquiries, annual reports and *ad hoc* reports, and absolute privilege for reports only. She added: "We expect the commissioner to use this privilege responsibly but if he is to be a fearless champion for children, he should not have to work under the threat of legal action", noting that the three existing Children's Commissioner in the United Kingdom already enjoyed this privilege.[60]

Although the Lords agreed to the amendment, Lord Lester questioned whether the Children's Commissioner should only have absolute, rather than qualified, privilege in relation to the reports that are made under clauses 3 to 5.[61] Lord Lester observed that granting absolute privilege would mean that "the commissioner, hypothetically, could vilify the reputation of any individual maliciously—that is to say in bad faith—or recklessly—without any honest belief in the truth of what was being published". He noted that it is "very rare" to give absolute privilege to any public officer or person outside Parliament, and contested that it may be "vulnerable to legal challenge" because of the *Human Rights Act 1999* (see section VII).

b. The Bill as it currently stands

Paragraph 1 of Schedule 1 states that the Children's Commissioner is to be a "corporate sole", rather than enjoying Crown status.

Paragraph 3 states that the Children's Commissioner is to be appointed by the Secretary of State for a period of five years, and may be reappointed once only, and, in regard to funding, paragraph 7 states that the Secretary of State "may make payments to the Children's Commissioner of such amounts, at such times and on such conditions (if any) as the Secretary of State considers appropriate".

These points (which remained unchanged during the passage of the Bill through its stages in the House of Lords) were noted by the JCHR, which said that "We are concerned that the new Commissioner falls short of the [UN]CRC requirements in the degree of his or her independence from the Secretary of State", saying that this manifested itself in several ways, specifically that "the Secretary of State sets the Commissioner's budget; and the Commissioner is appointed by the Secretary of State for a renewable term".[62]

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[60] HL Deb 17 June 2004 cc779–780
[61] HL Deb 17 June 2004 c881
[62] *JCHR Fifth Progress Report*, p8, para 1.19

The House of Lords' Constitution Committee, whose remit is to draw attention to matters of principle relating to principal parts of the constitution, also expressed concerns as to "whether the Bill makes sufficient provision for the Children's Commissioner to exercise his or her functions independently of the Secretary of State", specifically in relation to the provision that the Secretary of State determines the level of funding, which the Committee said "seems to us seriously to jeopardize the independence of the Commissioner".[63]

The United Nations' Children's Fund (UNICEF) noted that the fact that the Bill permits the Secretary of State to determine funding for the Commissioner "on such conditions (if any) as the Secretary of State considers appropriate", in their opinion, "undermines the independence of the Commissioner and could unduly influence their work and its benefit to England's 11 million children".[64]

On this point, the Government responded by saying said:

> The fact that his funding will be provided and monitored by the Secretary of State is normal procedure for what is technically a non-departmental public body spending public money. The provisions that allow the Secretary of State to attach conditions to payments serve only to ensure that the funds are spent in pursuit of the Commissioner's statutory functions. It is not the Government's intention to use this provision to control the Commissioner's day to day activities.[65]

In regard to the process of appointing the Children's Commissioner's, Margaret Hodge told the Welsh Affairs Committee on 4 May 2004 that she is "totally committed to children being very strongly involved in selecting and appointing the Commissioner";[66] however, it is perhaps noteworthy that there remains no provision for the involvement of children in the selection and appointment of the Children's Commissioner in the Bill as presented to the Commons for Second Reading. UNICEF notes that this means that "future governments will not be required to involve children in the selection process".[67]

Paragraph 5 of Schedule 1 states the Children's Commissioner shall appoint a deputy Children's Commissioner, and paragraph 8 regards the accounts of the Children's Commissioner, namely that the Children's Commissioner must send a copy of the accounts to the Secretary of State and the Comptroller and Auditor General for the accounts to be examined, certified and reported on.

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[63] Constitution Committee, *Children Bill*, 28 June 2004, HL 123 (hereafter *Const Cttee*), pp3–4, para 2 and Appendix 1, see: http://pubs1.tso.parliament.uk/pa/ld200304/ldselect/ldconst/123/123.pdf

[64] UNICEF, *Children's Commissioner*, 2 June 2004 (hereafter *UNICEF briefing*), see: http://www.unicef.org.uk/policy/policy_detail.asp?policy=14#

[65] *Const Cttee*, p6, Appendix 2

[66] Welsh Affairs Committee, *The Powers of the Children's Commissioner for Wales*, HC 538, 29 July 2004, Q96, see: http://pubs1.tso.parliament.uk/pa/cm200304/cmselect/cmwelaf/538/4050401.htm

[67] *UNICEF briefing*

Paragraph 10 concerns the privilege of the Children's Commissioner and protection from defamatory action.

Paragraph 11 amends section 36 of the *Criminal Justice and Court Services Act 2000* to add the position of Children's Commissioner and Deputy Children's Commissioner to the list of regulated positions for which it is an offence for an individual who is disqualified from working with children to knowingly apply for.

Paragraphs 12 and 13 disqualify the Children's Commissioner and members of his staff from membership of either the House of Commons or the Northern Ireland Assembly during their time in office.

2. The Children's Commissioner's general functions

a. Background and commentary on the original Bill

Clause 2 of the Bill, as presented to the House of Lords for Second Reading, sets out the general function of the Children's Commissioner as "promoting awareness of the views and interests of children in the United Kingdom". The JCHR also noted that, under clause 2(2):

> Included in what the Commissioner may do in the exercise of his or her general function are "encouraging" persons exercising functions affecting children to take account of their views and interests, "advising" the Secretary of State on the views and interests of children, and "considering or researching" the operation of complaints procedures relating to children and any other matter relating to children.[68]

The JCHR said "A general function of 'promoting awareness of the views and interests of children in the UK' appears weaker than a duty to promote, protect and monitor children's rights, or a mandate to ensure that legislation and practice is CRC-compliant". The Joint Committee added that "The vocabulary of 'encouraging', 'advising' and 'considering or researching' used in clause 2(2) also appears to us to give rise to concerns about the effectiveness of these duties".[69]

In addition, clause 2(7) stated that the Children's Commissioner "may" have regard to the UNCRC, rather than "must". However, clause 2(3) stated that the Children's Commissioner "is to be concerned in particular" with the views and interest of children in relation to their "physical and mental health; protection from harm and neglect; education and training; the contribution made by them to society; [and] social and economic well-

[68] *JCHR Fifth Progress Report*, p6, para 1.4,
[69] *JCHR Fifth Progress Report*, p7, para 1.10

being." These five factors were stated in the Green Paper as having arisen through the consultation with children, young people and families.[70]

The existing three other Children's Commissioners in the UK said they had "profound concerns" about the "lack of focus on children's rights" in the Bill as originally presented to the House of Lords.[71] They added "we would have welcomed a stronger focus in the Bill on safeguarding children's rights as set out in the UN Convention on the Rights of the Child", noting that "This is the position in the legislation for all the other UK commissioners".[72]

b. Lords consideration

During the Second Reading stage in the Lords, Baroness Ashton explained the Government's rationale for clause 2 as it was originally set out:

> I can assure your Lordships that this [the UNCRC] will form the backdrop for the commissioner's work if he thinks it appropriate. But we strongly believe that the views of children rather than the rights agenda should drive the commissioner's work. I say to my noble friend Lady Whitaker that we expect that the commissioner will play a role in advising the Government as they produce their report to the UN Committee on the Rights of the Child.[73]

At the Committee stage, several amendments were put forward to increase the power of the Children's Commissioner, although only the amendment in regard to clause 2 moved by Baroness Walmsley, the Liberal Democrat spokesperson for the Home Office, namely that the Children's Commissioner "must", rather than "may", have regard to the UNCRC, was agreed to. Baroness Ashton explained that she accepted the amendment having listened to the debate at Second Reading, in particular the argument advocated by Lady David "that a Government who signed up to and ratified such a document [the UNCRC] with all-party support must have regard to it".[74]

At Report stage, the powers of the Children's Commissioner under clause 2 were substantially altered. Baroness Walmsley tabled an amendment to insert a replacement clause 2, which, on division was agreed to by 114 to 93. Baroness Walmsley argued that the amended version of clause 2 would "provide a much stronger, more independent

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[70] *Every Child Matters*, pp13–14, paras 1.2–1.3

[71] Northern Ireland Commissioner for Children and Young People, *Children Bill: Joint Briefing by the Commissioners for Children in Northern Ireland, Scotland and Wales on the Part 1 proposals for a Children's Commissioner*, 25 March 2004, see: http://www.niccy.org/news/news250304.aspx

[72] Children's Commissioner for Wales and Northern Ireland Commissioner for Children and Young People, *Joint Statement on the Children Bill including proposals for a Children's Commissioner for England by the Children's Commissioners of Wales and Northern Ireland*, 5 March 2004 (hereafter *CCom Joint Statement*), see: http://www.childcom.org.uk/publications/Childrens_Commissioners_joint_statement_040304.doc

[73] HL Deb 30 March 2004 cc1302–1303

[74] HL Deb 4 May 2004 c1060

commissioner of the sort that this House gives all-party support and has enormous public support in the country, among children and among all of those professional groups who work with them".[75] The amendment sought to bring the general functions of the proposed Children's Commissioner more into line with the existing Children's Commissioners in Wales, Scotland and Northern Ireland.[76]

The amendment means that under clause 2 of the Bill as presented to the Commons for Second Reading, the Children's Commissioner's general functions are amended as follows:

- to promote and safeguard the rights and interests of children in England, rather than "promoting awareness of the views and interests of children in the United Kingdom", as originally stated in the Bill, which Baroness Walmsley described as not being "complete"; she noted that the other UK Children's Commissioners had stronger powers similar to those in her amendment,[77] and that her amendment would create a "rights based commissioner";[78]
- encourage persons exercising functions or engaged in activities affecting children to also take account of, and to advise the Secretary of State of, the rights of children, in addition to the views and interests as originally stated;
- to "review and report on the effectiveness", rather than "consider or research the operation" of complaints procedures, as well as advice and advocacy services, and inspection and whistle-blowing arrangements, so far as they relate to children;
- in taking reasonable steps to involve children in the discharge of his clause 2 functions, the Children's Commissioner should also ensure that, where his target audience is children, the material takes account of the means of communication, their level of understanding and their usual language;
- it allows the Children's Commissioner (or a person authorised by him) power of entry to any premises (other than a private dwelling), at which a child is accommodated or cared for, at any reasonable time and interview the child in private, if the child consents; this replicated a Government amendment that was also tabled for Report stage;
- gives the Children's Commissioner power to obtain information relevant to his purposes under clause 2 from "any person exercising functions under any enactment"; this replicated a Government amendment that was also tabled for Report stage; and,
- allows the Children's Commissioner to assist a child in bringing legal proceedings if the child is unable to do so, and where the Children's Commissioner thinks it reasonable to do so and no other body is able to provide assistance and/or take such legal action. Baroness Walmsley noted that this had the support of the Law

[75] HL Deb 17 June 2004 c888
[76] HL Deb 17 June 2004 c900
[77] HL Deb 17 June 2004 c886
[78] HL Deb 17 June 2004 c899

> Society,[79] although Lord Campbell of Alloway raised the issue of the cost of funding such assistance.[80]

The amendment also brought "very vulnerable people over the age of 18" within the scope of the Children's Commissioner's powers under clause 2,[81] specifically young people in custody under the age of 22; young people in respect of whom a children's services authority has duties under sections 23C to 24D of the *Children Act 1989*; and young people under the age of 21 with learning disabilities. Baroness Ashton argued, though, that, in the view of the Government, young adults in custody needed to be supported properly by adult services.[82]

However, the amendment deleted clause 2(3) from the Bill (as it stood after the Lords' Committee stage), which stated that the Children's Commissioner was to be "concerned in particular" with the views and interests of children in relation to their: physical and mental health; protection from harm and neglect; education and training; the contribution made by them to society; and, social and economic well-being. Explaining its deletion by her amendment, Baroness Walmsley said that it:

> inappropriately ties the commissioner to current government outcome goals for children. Ministers have suggested that those outcome goals originated from children, but that is disingenuous, as it does not accurately reflect the process of consultation. Previous versions of the Government's outcome goals were included in the draft national children's strategy in November 2001, and then in Every Child Matters, the Green Paper of September 2003. Although thousands of children responded to those draft goals, it is incorrect to describe them as originating with children. Although the outcome goals are very worthy, they are not comprehensive or based on the internationally accepted standards of the UN Convention on the Rights of the Child. We therefore feel that we need to go further.[83]

It also deleted what had been clause 2(6), which would have prevented the Children's Commissioner from undertaking an inquiry into an individual child using his clause 2 powers. Baroness Ashton, speaking in favour of keeping of clause 2(6), said its removal could mean that the commissioner became drawn into individual casework.[84] Lord Laming added: "If we are not careful … the commissioner may become too embroiled in individual cases and, secondly, he may become a monitor of how other organisations carry out their functions. If we do that, we shall weaken the distinctive functions of a children's commissioner, which is unique and should be seen to be unique".[85]

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[79] HL Deb 17 June 2004 c888
[80] HL Deb 17 June 2004 c891
[81] HL Deb 17 June 2004 c888
[82] HL Deb 17 June 2004 c899
[83] HL Deb 17 June 2004 c886
[84] HL Deb 17 June 2004 c898
[85] HL Deb 17 June 2004 c893

c. The Bill as it currently stands

Clause 2 of the Bill sets out the general function of the Children's Commissioner. The Commissioner "has the function of promoting and safeguarding the rights and interests of children in England"; it should be noted that his role does not extend to those non-devolved matters not covered by the other Children's Commissioners in the other three countries of the UK (see section III.D.5).

While the term children, or child, means a person under the age of 18 years (see clause 52), by virtue of clause 2(10) this definition is extended for clause 2 to also include: young people in custody under the age of 22; young people in respect of whom a children's services authority has duties under sections 23C to 24D of the *Children Act 1989*; and young people under the age of 21 with learning disabilities. Those children covered by sections 23C to 24D of the *Children Act 1989* are care leavers who are either under the age of 21 years or have yet to complete a full-time course of education or training.

In determining the "rights and interests" of children, either in general or in relation to a particular matter, clause 2(8) states that Children's Commissioner must have regard to the UNCRC, subject to any reservations, objections or interpretative declarations by the UK. The Government notes that "The Commissioner's work will be driven and shaped by the rights and interests of children, with the UNCRC providing a useful indicator of those rights and interests".[86]

Further details of what the Children's Commissioner may do in order to undertake his general function is set out in clause 2(2). Firstly, the Children's Commissioner may "encourage persons exercising functions or engaged in activities affecting children to take account of their rights, views and interests"; the Government explains that this could be achieved "by sharing best practice, to ensure that the rights, views and interests of children inform the development and delivery of their policies and practices", adding that "Not only will the Commissioner want to represent the views of children, he will encourage such persons to be proactive in gathering children's views themselves".[87]

In addition, the Children's Commissioner may advise, on his own initiative or in response to a request by the Government, the Secretary of State on the rights, views and interests of children. Finally, under clause 2(2)(c) the Children's Commissioner may review and report on the effectiveness of advice and advocacy services, complaints procedures, and inspection and whistle-blowing arrangements that relate to children, be they public or private, in order "to see that they are effective and quick and easy for children to access and follow".[88] However, clause 2(2)(d) underlines the fact that the Children's

[86] *Explanatory Notes*, para 29
[87] *Explanatory Notes*, para 20
[88] *Explanatory Notes*, para 22

Commissioner is not restricted to these three areas, and may review and report on any other matter relating to the rights, views and interests of children.

In discharging his general function, clause 2(3) states that the Children's Commissioner must take "reasonable steps" to involve children, and adds three particular areas. The Children's Commissioner should ensure children know what he does, and how to contact him. In addition, children and relevant organisations must be consulted on matters that are proposed to be reviewed and reported on under clauses 2(2)(c) and 2(2)(d). The Children's Commissioner must ensure that any materials issued by his office are in a form which is accessible by the audience of children for whom they are intended.

In involving children under clause 2(3), clause 2(4) states that the Children's Commissioner must have "particular regard to groups of children who do not have other adequate means by which they can make their views known". The Government states that "It is intended that the Commissioner will be proactive in seeking and reflecting the views of children whose voices might not otherwise be listened to".[89]

Clauses 2(5) and 2(6) relate to the Children's Commissioner's powers to obtain information in relation to undertaking his general function. While private dwellings are out of bounds, the Children's Commissioner, or a person authorised by him, would be able to enter any other premises at which a child was accommodated or cared for (such as a young offenders institute or a children's home[90]) in order to interview the child; the interview may take place in private if the child consents. Subsection 6 allows bodies with statutory functions already in possession of information to lawfully disclose that to the Children's Commissioner if so requested.

Clause 2(7) allows the Children's Commissioner to help a child to bring legal proceedings if the child themselves are unable to, it appears reasonable to the Children's Commissioner to do so, and there is no other person or body likely to provide such assistance and/or take such action.

In a written answer given to the House after the Lords had completed consideration of the Bill, Margaret Hodge said the Government "do intend" that the Children's Commissioner's general functions would be "promoting awareness of the views and interests of children". This was the originally proposed general function of the Children's Commissioner as included in clause 2(1) of the Bill that was presented to the Lords for Second Reading, but during the Lords stages the Children's Commissioner's general function was changed to: "promoting and safeguarding the rights and interests of children".

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[89] *Explanatory Notes*, para 25
[90] *Explanatory Notes*, para 26

It could be inferred that the Minister is presaging that the Government will be seeking to reverse the amendments made to the Bill during the Lords stages in regard to the Children's Commissioner's general function when the Bill has its Commons stages. In reference to this possibility, the CRAE said "we are very concerned that the Government plans to reverse many of the key changes made to clause 2 … which had strong cross-party support in the Lords".[91]

3. The requirement to produce an annual report

a. Lords consideration

The Children's Commissioner has to send his annual report to the Secretary of State, who must lay a copy before each House of Parliament. During the Bill's progress through the Lords stages, peers were concerned that the Secretary of State may not publish the annual report immediately. During the Committee stage, Earl Howe said:

> The Bill proposes that the commissioner should report to the Secretary of State and that the Secretary of State should then lay the report before Parliament. Only when this has happened will it be legally permissible for the report to be published. I am not happy about that, because it seems to me to be yet another manifestation of the commissioner's lack of freedom and independence from Ministers.
>
> Concerns have been expressed to me by a large number of outside bodies—including Barnardo's, the Children's Society, NSPCC, UNICEF, and a whole host of other eminent organisations—that a government Minister should not have the power to delay publication of the commissioner's annual report. To the noble Baroness it may seem a preposterous suggestion that any of her colleagues would want to delay publication; but, if that is so, why not take this provision out of the Bill? It is unnecessary and its presence only arouses unpleasant suspicions.[92]

In defending the clause, Baroness Andrews, the Government Spokesperson for Education and Skills, said that the clause was consistent with "normal parliamentary procedure and applies to other annual reports which are a record of work programmes and work achieved", adding that "The fact that the commissioner's annual report goes to the Secretary of State is a matter of courtesy and practice. It is not an opportunity for alteration and delay".[93] At Report stage, however, Baroness Ashton said that the Government "do not think it unreasonable to put some criteria on the timing of publication", adding that it "shall address that issue properly".[94]

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[91] Children's Rights Alliance for England, *HC Second Reading Briefing from Commissioner campaign co-ordinating group*, 7 September 2004, p1

[92] HL Deb 6 May 2004 c1275 . Also see *Ed&Skills Cttee* (uncorrected transcript), Qq74–79

[93] HL Deb 6 May 2004 cc1277–1278

[94] HL Deb 17 June 2004 cc925–926

b. The Bill as it currently stands

Clause 3 requires the Children's Commissioner, "as soon as possible after the end of each financial year", to produce an annual report on what he has done and what he has found under his general function powers under clause 2, and in particular how he has involved children in the discharge of his general function (under clause 2(3)), as well as what he intends to consider and research during the next financial year.

Sub-clause 3 states that the Children's Commissioner's annual report must be sent to the Secretary of State, who in turn must lay "unchanged" copies of it before each House of Parliament.[95]

Because clause 2 applies only to England, the Government explained that the clause 3 duties of the Children's Commissioner also relate only to England.[96]

4. Inquiries

a. Background and commentary on the original Bill

The Bill, as it was presented to the Lords for Second Reading, would have allowed the Children's Commissioner to undertake an inquiry into the case of an individual child which raises issues of relevance to other children only when requested to do so by the Secretary of State under clause 4. In addition, the original Bill specifically barred the Children's Commissioner from undertaking an inquiry into the case of an individual child using his clause 2 powers.

In the Green Paper, the Government argued that "It is essential that the Commissioner does not become dominated by responding to numerous individual complaints and retains its strategic focus … The Commissioner would only investigate individual cases where the issues have a wider relevance to other children, as directed by the Secretary of State".[97]

Margaret Hodge expanded on the first point, arguing that, in regard to the Welsh Children's Commissioner, as a result of the his power to investigate individual cases "very little work has been done in Wales, on those absolutely key, very important issues which I think will influence the outcomes for children".[98] Peter Clarke accepted that the number of individual cases he was dealing with, some 500 over the three years since the

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[95] *Explanatory Notes*, para 32

[96] Department of Education and Skills, *Letter from Baroness Ashton of Upholland to Lord Roberts of Conwy*, 1 July 2004, HDEP 2004/253

[97] *Every Child Matters*, p79, para 5.51

[98] Welsh Affairs Committee, *The Powers of the Children's Commissioner for Wales*, 29 July 2004, HC 538 2003–04 (hereafter *WelshAff Cttee (CCom Powers)*), Q85, see: http://pubs1.tso.parliament.uk/pa/cm200304/cmselect/cmwelaf/538/53802.htm

office was established,[99] was a "pressure we have felt … on occasion", but noted that the Children's Commissioner for Wales is "meant to be the place that children come after they have gone through the complaints procedure" and expected that once local systems for complaint resolution are in place this part of his workload may decline.

Arguing his corner, Mr Clarke said that "My personal experience at the moment is that again from a child's perspective it is hugely helpful to my credibility that I can pick up an individual case and run with it because otherwise the dialogue would be much more difficult because I would have to say, 'No, we cannot do that. I can talk to the people who make the policies for you'".[100] This view was supported by the Welsh Affairs Committee, who said: "Our experience of the Children's Commissioner for Wales confirms to us that the power to launch investigations enhances rather than limits the effectiveness of a Commissioner".[101]

UNICEF argued that because the Children's Commissioner could only undertake an inquiry at the direction of the Secretary of State, clause 4 was a "fundamental violation of independence … Allowing ministers to direct the Commissioner to carry out inquiries enables them to effectively determine his/her work programme". UNICEF argued that the Children's Commissioner should have the power to decide what he investigates, within tightly defined criteria set out in legislation.[102]

The CRAE added: "We agree with the Government that the Commissioner's role should be a strategic one and that s/he should not get bogged down in individual cases. However, … we cannot see any benefit in stopping the Commissioner from ever supporting an individual child … though we would support clarification in the Bill that individual investigations must have wider policy implications".

b. Lords consideration

Baroness Byford noted during Committee stage that the Bill, as it then stood, would mean that

> The commissioner [has] such powers [right of access to documents, the power to enter institutions and to meet children in private, and the right to summon witnesses] only when she or he is carrying out an inquiry directed by the Secretary of State. It will be the Secretary of State and not the commissioner who determines the terms of reference for such an investigation. It will be the Secretary of State—again, not the commissioner—who determines if, when and how the report from such an inquiry will be published.[103]

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[99] *Ed&Skills Cttee (uncorrected transcript)*, Q73
[100] *JCHR Children Bill*, Q21
[101] *WelshAff Cttee (CCom Powers)*, p11, para 21
[102] *UNICEF briefing*
[103] HL Deb 6 May 2004 c1306

Lord Lester added that "Clause 4 places the commissioner entirely under the control of the Secretary of State in deciding whether he can carry out one of these inquiries at all. That seems wholly inappropriate and saps the independence of the commissioner".[104]

At Report stage, the Government tabled an amendment to introduce a new clause to allow the Children's Commissioner to initiate inquiries; this was to complement the existing clause 4. Explaining its decision, Baroness Ashton said that she had reflected upon the points raised during the Committee stage, and said that the new clause would help the Children's Commissioner to be seen to be independent, while also avoiding the risk of the Commissioner being swamped by casework.[105]

After the insertion of the new clause had been agreed to, an amendment was moved by Baroness Howe of Idlicote to remove the existing clause 4, saying that the addition of the new clause and the extra powers that it would confer on the Children's Commissioner were "marred by the continuing power of the Secretary of State to direct the commissioner to undertake an inquiry into the case of an individual child", citing the independence of the other commissioners in the UK in this respect.[106]

In defending the continued inclusion of clause 4, Baroness Ashton explained that where the Secretary of State did direct the Children's Commissioner to undertake an inquiry, it would be accompanied by the resources necessary for its achievement. She said: "It is important that if the Government are going to, very rarely but none the less perhaps occasionally, say, 'We need to look at an issue; we do believe it is critical', it is possible for the Secretary of State to say, 'I wish this to be done and I wish this to be done by the commissioner'".[107] Baroness Howe withdrew her amendment, although believed it should be reflected on.

During the Third Reading stage, an amendment that would have allowed the Secretary of State to only "request", rather than "direct", the Children's Commissioner to undertake an inquiry was moved by Baroness Howe. Arguing against the need for the amendment, Baroness Ashton said "We do not envisage forcing the commissioner to do something against his or her will. Of course there would be discussion, debate and dialogue before any such direction was issued".[108] On division, the amendment was rejected (112 to 102).

One particular amendment which was made to clause 4 during its passage through the Lords related to subsection 4, which was originally worded: "The Secretary of State must, subject to subsection (5), publish each report received by him under this section in such manner as he thinks fit". UNICEF highlighted the phrase "in such manner as he thinks

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[104] HL Deb 6 May 2004 c1309
[105] HL Deb 17 June 2004 c927
[106] HL Deb 17 June 2004 cc941–942
[107] HL Deb 17 June 2004 c944
[108] HL Deb 15 July 2004 c1440

fit" as a concern, and a Government amendment to delete the phrase was agreed to. Baroness Ashton explained that the phrase "added little to the duty on the Secretary of State, and it might have given the impression that the Secretary of State could choose to publish a report in some obscure manner in order to minimise awareness of it. That was certainly never our intention".[109]

When the Children's Commissioner produces a report, and (in particular under clause 4) makes recommendations, there is no duty under the Bill as it stands at Second Reading in the Commons for the Government to respond to such a report or its recommendations. UNICEF argues that, without this power, "any recommendations made by the Commissioner for England may not be of any practical benefit to children". The Fund highlighted the situation in Wales and Northern Ireland, where there is a requirement upon the affected individual or body (including Government) to respond within three months of a report being produced by the Children's Commissioner following a formal investigation.[110]

This issue was pursued during the Committee, Report and Third Reading stages in the House of Lords by Baroness Walmsley, whose amendment to insert a new clause entitled "Further action following report by Commissioner" was not moved in Committee stage and was withdrawn on the other two occasions. The clause, if it had been agreed to, would have required a body, to whom a recommendation was directed, to respond within three months, either stating the action it had taken in compliance with the recommendation, or its reasons for not complying with it.

During the Report stage, Baroness Ashton argued against accepting the new clause, saying "I am not sure whether I agree with the bureaucratic process proposed", adding that the proposed new clause "goes a little further than required".[111] However, she did concede some ground, saying "I appreciate that it is important to look at what happens beyond, and to ensure that thing are acted upon", and stated "we are very comfortable with the principle, but I would like to explore further existing mechanisms that might be better used". At Third Reading stage, Baroness Ashton informed the Lords that:

> My right honourable friend the Minister of State for Children, Young People and Families [Margaret Hodge] has asked me to inform your Lordships that she is considering this issue. She will consider whether we need to make further provision regarding this matter and is minded to consider introducing an amendment in another place to take it forward. I shall endeavour to ensure that all noble Lords who have taken part in this debate are kept in touch with her deliberations. It will be a different amendment as she does not want to go so far as the noble Baroness in terms of bureaucracy, although I know that that is not what the noble Baroness sought. I shall keep noble Lords informed on that

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[109] HL Deb 17 June 2004 c939
[110] *UNICEF briefing*
[111] HL Deb 17 June 2004 cc947–948

> matter. I do not have final confirmation of what the measure might look like, but it is her intention to introduce such a provision in another place. I hope that it will address noble Lords' concerns and that they will feel able to withdraw the amendment.[112]

c. The Bill as it currently stands

Clause 4 allows the Children's Commissioner to initiate an inquiry subject to two criteria: first, if he "considers that the case of an individual child raises issues of public policy of relevance to other children"—the explanatory notes state that "This would for example mean that the Commissioner could hold an inquiry into the case of a child in a children's home or a residential school if the issues involved were relevant in general to children in such an establishment, but not if they were only relevant to children in that particular establishment";[113] and, secondly, that such an inquiry would "not duplicate work that is the function of another person". The aim of such an inquiry would be to investigate and make recommendations about those issues of public policy.

Although, under sub-clause 3, the Children's Commissioner must "consult" the Secretary of State before holding an inquiry, Baroness Ashton explained:

> I absolutely stress that that is not so that the Secretary of State can exercise a veto—although, if the Secretary of State had concerns that the commissioner was at risk of contravening proposed new subsections (1) and (2), he would make the commissioner aware of that. More typically, the Secretary of State might be aware of, or indeed planning, a broader inquiry that would take in the same case, or might suggest another case not known to the commissioner that could help to clarify the same issues. There could even be issues of public interest. A Secretary of State should be able to bring such issues to the commissioner's attention. However, the final decision lies with the commissioner, who is independent and free to act, but will make decisions in the context of the available information.[114]

It was further explained that the Government would work with the Children's Commissioner to draw up guidelines on the process of consultation on matters such as how quickly a response from the Secretary of State should be expected, as well as issues of information, in order "to ensure that the system works … [and] not in any way to limit his independence".[115]

A report must be published by the Children's Commissioner (and a copy sent to the Secretary of State) "as soon as possible" after the completion of an inquiry, although the

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[112] HL Deb 15 July 2004 c1449
[113] *Explanatory Notes*, para 34
[114] HL Deb 17 June 2004 c928
[115] HL Deb 17 June 2004 c928

report need not identify an individual child if it is considered undesirable to do so by the Children's Commissioner.

Clause 5 will allow the Secretary of State to direct the Children's Commissioner to undertake an inquiry into the case of an individual child if he considers that the case "raises issues of relevance to other children". It should be noted that, unlike clause 4, there is no reference to "public policy"; this means, for example, that the Children's Commissioner could hold an inquiry into the case of a child in a children's home or a residential school if the issues involved were relevant in general to children in such an establishment (as for clause 4), but, distinctively under clause 5, also if they were only relevant to children in that particular establishment.[116]

The Government states that it is "envisaged" that the Children's Commissioner will be able to offer advice to the Secretary of State in determining whether a particular case is indeed of relevance to other children.[117]

Clause 4 and 5 inquiries can be held in private if the Children's Commissioner thinks it is appropriate to do so.

Sub-clause 3 states that the Children's Commissioner must produce a report "as soon as possible" after the completion of a clause 5 inquiry, and send a copy to the Secretary of State who must publish the report, unless it is not possible to edit the report to remove information which may undesirably identify a child. Any report published by the Secretary of State must be laid before both Houses of Parliament.

For an inquiry conducted under clause 4, the Children's Commissioner would, by virtue of sub-clauses 7 to 9, enjoy a range of powers under existing legislation to assist in the completion of the inquiry in any of the four countries of the United Kingdom. The Children's Commissioner "will be able to summons people to attend to give evidence or to produce documents and to administer oaths and take evidence on oath and it will be an offence to disobey a summons by for example refusing to give evidence or by tampering with documentary evidence".[118] A clause 5 inquiry would have the same powers, with the additional provision that the Secretary of State can direct parties to the inquiry to pay his costs and make orders for parties to pay the costs of other parties to the inquiry.[119]

In advance of its Second Reading in the Commons, the CRAE argued that the Bill's continuing provision to allow the Secretary of State to direct the Children's Commissioner to undertake an inquiry was unnecessary, noting that none of the Commissioners in other countries of the UK or across Europe is subject to this and

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[116] *Explanatory Notes*, para 38
[117] *Explanatory Notes*, para 38
[118] *Explanatory Notes*, para 37
[119] *Explanatory Notes*, para 41

arguing that it is "in direct conflict with the Commissioner's independence, and is unnecessary – the Secretary of State has existing powers to establish judicial-style inquiries, and can obviously invite the Commissioner to carry out the work … The Government can use debate and dialogue to persuade the Commissioner to use his/her independent power … to establish a formal inquiry. There can be only one purpose to retaining [this] clause – to give this and successive governments the legal power to force the Commissioner to undertake an inquiry against his/her judgment".[120]

5. Territorial coverage of the Children's Commissioner

a. Background and commentary on the original Bill

Clause 2(1) of the Bill, as presented to the House of Lords, proposed the creation of a Children's Commissioner that would have "the function of promoting awareness of the views and interests of children in the United Kingdom", although the original clause 5 prevented the UK Children's Commissioner from being concerned with any matter which is within the remit of the Children's Commissioners in the Devolved Administrations. This, the Government explained, would mean that the Children's Commissioner would "be concerned with all matters affecting children in England, and non-devolved matters affecting children in Wales, Scotland and Northern Ireland".[121] Therefore, in Wales, for example, children's matters would be jointly covered by the Children's Commissioner for Wales (for those devolved matters) and the Children's Commissioner for the United Kingdom (for those non-devolved matters).

In September 2003, Althea Efunshile, the Director of the Government's former Children and Young Person's Unit, did not rule out the possibility of extending the remit of the Welsh Children's Commissioner to cover non-devolved matters, telling the Welsh Affairs Committee:

> Certainly the issue of children and young people in Wales affected by reserved matters has to be sorted out in the legislation either by extending the responsibilities and remit of the Welsh Commissioner—which is one way of doing it—or by ensuring that the English Commissioner has that responsibility. One way or another we need to make sure that there are not a group of young people who are not covered by a Commissioner.[122]

In explaining the eventual decision to make the English Commissioner responsible for non-devolved matters in Wales, Margaret Hodge subsequently told the Welsh Affairs

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[120] Children's Rights Alliance for England, *HC Second Reading Briefing from Commissioner campaign co-ordinating group*, 7 September 2004, pp3–4

[121] Explanatory Notes, *Children Bill [Bill 35]*, para 20, see: http://pubs1.tso.parliament.uk/pa/ld200304/ldbills/035/en/04035x--.htm

[122] Welsh Affairs Committee, *The Empowerment of Children and Young People in Wales*, 15 January 2004, HC177-II 2003–04 (hereafter *WelshAff Cttee (Empowerment)*), Ev 189, Q590, see: http://pubs1.tso.parliament.uk/pa/cm200304/cmselect/cmwelaf/177/17702.htm#evidence

Committee: "Quite simply … this was not a context in which we were seeking to extend the devolution of powers to Wales in this particular area". She argued that "for children and young people who were accessing non-devolved services across Britain it was appropriate that the Commissioner responsible for those services, who is the UK Commissioner, should be the one answerable … At the moment, if it is a non-devolved issue, they could go to the Welsh Commissioner and he would have to say, 'This is not to do with me.' Now, he can refer the matter to somebody for whom these issues are firmly on their constitutional agenda".[123] Ms Hodge added in written evidence that the Government "does not believe that the establishment of the proposed Commissioner will create any confusion for children or anyone else in Wales".[124]

However, the Children's Commissioners of Wales and Northern Ireland,[125] in a joint statement, said that a "fundamental weakness" was the coverage of non-devolved matters. The Commissioners said: "We believe that the ability to act on children's behalf should rest with the Commissioner nearest to the children. It will cause confusion in the minds of children living in Wales, Scotland and Northern Ireland, if they must turn to someone other than the Commissioner for their own country".[126]

In evidence to the Joint Committee on Human Rights' inquiry into the *Children Bill* on 20 April 2004, Mr Clarke provided further detail. He said that "Taking the child's perspective it seems to me that that is by far the simplest system because the child wants to know they go to the Wales commissioner for Wales if they are in Wales, and Northern Ireland and Scotland accordingly". He added: "I understand that the argument is put forward about consistency, but for me the only consistency that matters is the consistency in the mind of the child, rather than any department or any particular initiative or even any particular Bill".

In regard to the Bill's proposed system of a UK Children's Commissioner responsible for those areas of policy that were not devolved matters in Wales, Scotland and Northern Ireland, he said he was "perplexed" that this was being sought, saying it would "cause an objective overlap between that general power I have and the English commissioner. It causes confusion in the minds of adults, let alone children and young people"; he said that the "fundamental concept is flawed".

The views of the Welsh Children's Commissioner were shared by his Scottish and Northern Irish counterparts who also gave evidence to the Committee, and Professor Marshall said "I think it is a question of whether you fit the children into devolution or whether you fit the government structures to meet the needs of children".[127]

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[123] *WelshAff Cttee (CCom Powers)*, Ev 14, Q77
[124] *WelshAff Cttee (CCom Powers)*, Ev 37
[125] At the time of the statement, the Commissioner for Children and Young People for Scotland had not taken up her post.
[126] *CCom Joint Statement*
[127] *JCHR Children Bill*, Qq63–64 and 66

On 4 May 2004, Members of the NAfW held a plenary session debate on the *Children Bill*, the culmination of which was a unanimous vote, supported by fifty Assembly Members, in favour of the motion:

> The Assembly notes the provisions of the Children Bill currently in Parliament and the widespread support it has attracted and welcomes the additional powers it grants the Assembly, but rejects the proposals in the Bill that the Children's Commissioner for England will have statutory functions over non-devolved matters affecting children and young people in Wales, and instead calls for the powers of the Children's Commissioner for Wales to be extended over those non-devolved areas of policy.[128]

The Welsh Affairs Committee also argued against the Government's proposals, contesting that "By simply using the devolution template for the establishment of the English Commissioner, the child's perspective has been placed second to the perspective of Ministers", concluding that this "puts into question the Minister's commitment to placing the needs of children over that of spurious bureaucratic expediency".[129] Rather, the Committee was of the opinion that the Welsh Children's Commissioner's powers should be extended to cover all non-devolved areas of policy for children and young people in Wales.[130]

In addition, the Constitution Committee of the House of Lords said it was "concerned" about "the provision made for the Children's Commissioner to have functions at the United Kingdom level (including the reasons, the extent to which this provision is compatible with the existing schemes of devolution, and an enumeration of the functions relating to children that are not devolved to Scotland and Northern Ireland)".[131]

b. Lords consideration

During the Second Reading debate in the Lords, Lord Thomas of Gresford commented:

> The devolution argument has reared its ugly head once again in the presentation of this Bill. Everyone in Wales—cross-party and the National Assembly—wants a commissioner who has the rights and authority to deal with all the issues that involve children in Wales and not an English commissioner pushing over the border. Someone suggested the words, "Keep your hands off Welsh children", but perhaps that puts it a little bit too far.
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> […]

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[128] NAW Deb 4 May 2004
[129] *WelshAff Cttee (CCom Powers)*, p28, paras 76–77
[130] *WelshAff Cttee (Empowerment)*, p34, para 105
[131] Constitution Committee, *Children Bill*, HL 123, 28 June 2004, p3, para 2, see: http://pubs1.tso.parliament.uk/pa/ld200304/ldselect/ldconst/123/123.pdf

> We are distressed that this division is being emphasised between devolved and non-devolved matters when the Bill is being considered. We find that in Wales, there is no support for it. We find that the jurisdiction of the Welsh commissioner is to be diminished. As my colleague in Cardiff, Kirsty Williams, put it, it is a step backwards or potentially a step backwards unless your Lordships do something about it in the consideration of the Bill.
>
> I am sure that there are many good things in the Bill as regards the provision of services and the integration and co-ordination of issues that concern children, which my colleagues have already addressed and welcomed. For Welsh people in this House and in Wales, there is a very considerable problem if we find that children in Wales will to suffer because of some artificial division between devolved and non-devolved matters. We want a children's commissioner that acts for every child in Wales with every problem that that child has to face. We want someone who is readily available and identifiable to whom children and their parents can turn for advice and help.[132]

During the Committee stage of the Bill, Earl Howe proposed that the geographical scope of the phrase "The Children's Commissioner has … the function of promoting awareness of the views and interests of children in the United Kingdom" be amended to cover England only. Referring to Lord Thomas's Second Reading speech, Earl Howe said that, in this respect, the Bill as it had been presented to the Lords was "entrenching the administrative divisions arising from devolution in an unnecessary and retrograde way".[133] He added that:

> The Government's route here may be logical but I suggest that it is not the only logic. It depends on your starting point. If your starting point is the logic that flows from the devolution settlement, if I may use that phrase, you will end up with the Bill as it now is. If your starting point is the advocacy arrangements that children are likely to find simpler, more understandable and less confusing, then I believe that you end up roughly where I suggested in the amendments that I tabled. The arguments advanced by the Minister are essentially top-down arguments, and that is what I find unappealing about them.[134]

Earl Howe said that "it is odd, to put it at its kindest, that the lines of accountability that the Government are proposing for these two commissioners appear to put legalistic considerations ahead of common sense", arguing that "Children do not understand devolved and non-devolved powers; they want a simple system. They need to be able to access a single commissioner whom they regard as the champion of their interests across the board".[135]

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[132] HL Deb 30 March 2004 cc1253–4
[133] HL Deb 4 May 2004 c1065
[134] HL Deb 4 May 2004 c1079
[135] HL Deb 4 May 2004 cc1065–6

Earl Howe summarised his proposal as follows: "Let the three existing commissioners continue to fulfil their functions in their respective territories. Do not confuse lines of accountability by making the English commissioner responsible for some matters in those territories but not others; but instead make him responsible solely for English children, and alongside that create a duty for all four commissioners to co-operate with one another on matters that affect more than one country, such as child poverty".[136]

He also questioned whether the role proposed in the Bill would in fact be a Children's Commissioner for the UK in true sense in that, under clause 5 of the Bill presented at Second Reading in the Lords, the Children's Commissioner "will not be concerned with the views and interests of children who fall under the remit of any of the other three commissioners, in relation to devolved matters, nor may he undertake inquiries into any devolved matters".[137]

Although the amendment received backing from other peers, it did not have the support of Baroness Andrews who explained that the Government was seeking "to create an English commissioner with the scope to address non-devolved issues across the UK … Because he has the scope to work across the UK, he will be able to offer the children of the UK additional access to issues that are now reserved", adding that "he is the equal, and not the superior, of the other commissioners—he is their partner". She also said it was a "false argument" to suggest that children might be confused by there being two Children's Commissioners to deal with their matters, arguing it was down to the Commissioners themselves to inform children of their respective roles.[138]

Earl Howe withdrew his amendment although suggested that it should be reflected upon before the Report stage.

In the Report stage on 17 June 2004, Baroness Walmsley moved an amendment that, like Earl Howe's amendment at Committee stage, sought to limit the scope of the proposed Children's Commissioner to England only. In regard to the proposed narrowing of the territorial coverage of the Children's Commissioner, Baroness Walmsley explained:

> The children's organisations co-ordinating the campaign for a commissioner, and the three existing commissioners in Wales, Scotland and Northern Ireland, all feel strongly that the Bill should establish a commissioner for children in England. They feel that the legislation establishing a commissioner in Wales, Scotland and Northern Ireland should be extended as necessary to ensure that they can exercise their powers of investigating, reviewing and reporting to cover all matters—devolved or reserved—in their countries. The idea of the Secretary of State in England directing the commissioner to go into one of the other countries to carry out a formal investigation is extraordinary, given the existence of the other

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[136] HL Deb 4 May 2004 cc1066-7
[137] HL Deb 4 May 2004 c1080
[138] HL Deb 4 May 2004 c1074

> commissioners. It undermines their credibility, particularly in Scotland at a time when its new commissioner is finding her feet.[139]

The proposed amendment, however, would mean that those non-devolved areas of policy relating to children would not be covered by any Children's Commissioner. Baroness Walmsley did not make any amendments to extend the powers of the existing Children's Commissioners in the Devolved Administrations to cover such matters, although she acknowledged that this was an area that could be addressed:

> The Bill could be used to extend the powers of the commissioner in Wales and Northern Ireland as necessary. Authoritative legal opinion—of which Ministers are aware—emphasises that nothing in the devolution settlements prevents the commissioners and independent non-decision-making bodies investigating, reviewing and reporting on non-devolved matters. The debate is not about devolution of governmental functions at all, but about independent children's commissioners being able to exercise their functions in each country, in relation to all matters that affect children's rights and interests.[140]

Lord Roberts of Conwy reflected that this change in the Children's Commissioner's remit had "considerable implications" for Wales (and, by extension, also Scotland and Northern Ireland) in the respect of the absence of coverage by a Children's Commissioner of the non-devolved matters.[141]

Putting the Government's case, Baroness Ashton said that, as Lord Roberts had highlighted, "to remove this provision [that it is a Children's Commissioner for the United Kingdom] means that on non-devolved issues some children would have nowhere to go. I do not believe that that is a consequence that the noble Lord [intended]".[142]

Nevertheless, peers voted 114 to 93 to agree to the amendment made by Baroness Walmsley.

During Third Reading, the Government introduced amendments, all of which were to agreed to, in order to "correct certain anomalies" that had arisen as a result of changing the Children's Commissioner clause 2 remit to only England, rather than United Kingdom. However, these amendments did not address the issue of the lack of coverage of non-devolved matters.[143]

In a written answer to the House following the Third Reading in the Lords, the Government stated its intention to reinstate in the Bill the original intention that the

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[139] HL Deb 17 June 2004 cc886–7
[140] HL Deb 17 June 2004 c887
[141] HL Deb 17 June 2004 c894
[142] HL Deb 17 June 2004 c898
[143] HL Deb 15 July 2004 cc1414–1415

Children's Commissioner's general functions under clause 2 should apply UK-wide. Margaret Hodge said "we do intend that the Commissioner should carry out his or her general functions in relation to non-devolved matters across the UK—promoting awareness of the views and interests of children [as stated in clause 2(1) of the Bill before it was amended], and looking into and reporting on the matters which affect and concern them—as well as his or her inquiry functions".[144]

c. The Bill as it currently stands

The general function of the Children's Commissioner, as stated in clause 2, is restricted to England only. As such, non-devolved matters in Wales, Scotland and Northern Ireland are currently not covered by any Children's Commissioner. However, the Children's Commissioner may use his powers under clauses 4 and 5 to undertake an inquiry into the case of an individual child in England and the other three countries of the United Kingdom but only if it concerns a non-devolved matter, as stated by clause 6. The CRAE noted that "The legislation is muddled as to whether this is a Commissioner for England or the UK".[145]

[144] HC Deb 22 July 2004 c496W

[145] Children's Rights Alliance for England, *Children's Rights Commissioner: Latest Developments*, see: http://www.crae.org.uk/crae/commissioner/latest.html

IV Parts 2 and 3: Children's Services

In his report into the death of Victoria Climbié, Lord Laming concluded: "Sadly, the Report is a vivid demonstration of poor practice within and between social services, the police and the health agencies. It is also a stark reminder of the consequences of ineffective and inept management".[146]

A. Closer working

1. Co-operation between services and safeguarding and promoting welfare

a. Background and commentary on the original Bill

Lord Laming's report said that:

> The future lies with those managers who can demonstrate the capacity to work effectively across organisational boundaries. Such boundaries will always exist. Those able to operate flexibly need encouragement, in contrast to those who persist in working in isolation and making decisions alone … The safeguarding of children must not be placed in jeopardy by individual preference. The joint training of staff and the sharing of budgets are likely to ensure an equality of desire and effort to make them work effectively.[147]

The Green Paper observed that "Children's needs are complex and rarely fit neatly within one set of organisational boundaries",[148] and highlighted that the fragmentation of responsibilities for children can lead to problems such as:

- information not being shared between agencies and concerns not being passed on. As a result children may slip through the net or receive services only when problems become severe;
- a child may receive assessments from different agencies which duplicate rather than complement each other;
- several professionals may be in contact with a child over time but no single person provides continuity or co-ordinates services;
- several agencies spend some money on the child rather than one agency spending an appropriate amount on a co-ordinated package of support;
- services may disagree about whether the child falls into their categories and may try to pass on difficult cases to other organisations;
- professionals and services may be based in different locations rather than co-located. Co-location can make services more accessible to users, improve inter-professional relationships and ways of working; and,

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[146] *Victoria Climbié Inquiry Report*, p13, para 1.65
[147] *Victoria Climbié Inquiry Report*, p8, para 1.37
[148] *Every Child Matters*, p68, para 5.1

- services are planned and commissioned to focus on one particular objective—such as childcare, truancy, or family abuse.[149]

Lord Laming argued that "effective support for children and families … depends on a number of agencies working well together. It is a multi-disciplinary task".[150] This was a view shared by Mr Milburn, who said in January 2003 that "Fundamental reform is needed to pool knowledge, skills and resources to provide more seamless local services for children".[151]

In the Green Paper, the Government said that it "wants to move to a system where the key services and budgets for children and young people are placed within a single organisational focus locally".[152]

Clause 7 of the Bill (see below) creates a statutory duty for agencies who provide services to co-operate and pool resources, which is a key stepping stone towards the Government's aim of creating Children's Trusts, although the phrase "Children's Trusts" does not feature in the Children Bill. In the explanatory notes, however, the Government says: "As well as underpinning wide co-operation arrangements, these duties and powers will also provide the statutory context within which agencies will be encouraged to integrate commissioning and delivery of children's services, underpinned by pooled budgeting arrangements, in Children's Trusts".[153]

The Government said in the follow-up document to the Green Paper that "The primary purpose of a Children's Trust is to secure integrated commissioning leading to more integrated service delivery and better outcomes for children and young people". It added:

> 2.20 […] Children's Trusts will be formed through the pooling of budgets and resources across the Local Education Authority, children's social services, Connexions, certain health services, and where agreed locally, Youth Offending Teams. An agreement under section 31 of the Health Act 1999 or the new budget pooling power in the Children Bill is needed to formalise and strengthen involvement in the partnership, with appropriate governance arrangements. A Children's Trust will not necessitate structural change or staff transfers. If localities want to transfer staff or create new legal structures this is entirely a matter for local discretion.
>
> 2.21 Children's Trusts will be based in local government but engage a wide range of partners, including voluntary and community sector organisations, in a visible, transparent and outward-looking way of

[149] *Every Child Matters*, pp68–69, para 5.2
[150] *Victoria Climbié Inquiry Report*, p6, para 1.30
[151] HC Deb 28 January 2004 c741
[152] *Every Child Matters*, pp69–70, para 5.7
[153] *Explanatory Notes*, para 44

> working. The Children's Trust will decide how best to spend pooled budgets to secure the most effective integrated delivery of services, based on the overall vision agreed by all partners in the local area, and will continuously monitor and review performance. The Children's Trust may also commission services on behalf of the Local Safeguarding Children Board.
>
> 2.22 The Children's Trust will involve other organisations that do not pool their budgets in a non-executive capacity. This may be part of the arrangements to promote cooperation with, and involve, other stakeholders including the voluntary and community sector and children and young people.
>
> 2.23 Children's Trusts will typically sit at the upper tier level but may want to tailor their structures to local circumstances. For instance, the Trust may decide to commission some services at a strategic level on an upper tier basis while other services may be devolved down to smaller areas, such as clusters of schools, or district council or individual Primary Care Trust level. Alternatively, they may want to contract with a cluster of schools to commission and deliver services in an area.
>
> 2.24 The Bill does not create Children's Trusts as statutory organisations but it does encourage and facilitate their development. Statutory guidance will make clear that, for the Local Authority, Primary Care Trust and Connexions, we expect local cooperation to include consideration of joint commissioning of children's services, involving voluntary and community sector bodies and Youth Offending Teams, where appropriate locally. There is a new enabling power for partners to pool budgets and resources, thus enabling broader pooling arrangements than S31 of the Health Act 1999, which underpins existing Children's Trusts. Guidance will reinforce good practice on commissioning and ensure a level playing field for all sectors in line with the Best Value approach.[154]

The concept of Children's Trusts was announced by Mr Milburn in his statement on the Victoria Climbié Inquiry in January 2003, in order to create "more seamless local services for children". He told the House:

> I am today inviting health and social services, and other local services such as education, to become the first-generation children's trusts. Those pilot children's trusts will mean that local services for children are run through a single local organisation.
>
> We will explore a range of models, including children's trusts, that could be led by local authorities and others, and that could be established as new public-interest organisations, drawing in the expertise of the community, private and

[154] *Next Steps*, pp17–18, paragraph numbers as shown

> voluntary sectors. In future, services for children must be centred not around the interests of any organisation, but around the interests of the child. Nothing—no existing organisation, no existing structure—should be allowed to stand in the way.[155]

There are presently 35 "Pathfinder" Children's Trusts in operation which are subject to a programme of evaluation; further information is available at:

http://www.dfes.gov.uk/childrenstrusts/

The Government said in the Green Paper that it was recommending that most areas should have a Children's Trust by 2006 "so that there is a strong foundation of learning in place to allow all areas to have one by 2008", adding that this would not be a matter for legislation.[156]

However, *ChildrenNow* magazine recently reported that a survey they had conducted found more than a third of councils are not even trying to meet the 2006 target for setting up children's trusts, and that one-third do not expect their trusts to be functional until 2008, while others are looking beyond this date. The magazine reported:

> According to one council's social services director: "A lot of places are finding they've moved forward too quickly into children's trusts and are beginning to struggle. Restructuring has led to senior managers taking their eyes off the frontline and standards slipping - not getting the basics done in terms of children on the child-protection register being allocated visits and care planning."
>
> While the aims of the Children Bill have overwhelming support, with more than 90 per cent of councils agreeing that structural change will improve service delivery, directors warn that organisational changes must not be the sole goal. Some are concerned that there will be an initial disruption to services and that barriers will be created between social care for adults and children.[157]

The Confederation of Education and Children's Services Managers argued that the Government's proposals did not "recognise … the different professional traditions of education and social care, of teacher and social worker … Care needs to be taken that the legislation and guidance does not negate the significant progress made in school improvement in recent years".[158]

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[155] HC Deb 28 January 2004 c741

[156] *Every Child Matters: Next Steps*, p18, para 2.25

[157] "Analysis: Children's services—Councils balk at restructuring", *ChildrenNow*, 31 August 2004, see: http://www.childrennow.co.uk/news/index.cfm?fuseaction=details&UID=6d5381be-c2ec-4044-b756-9b056bd997b8

[158] Confederation of Education and Children's Services Managers, *Children Bill—Briefing*, p2

Although clause 21 creates a similar provision to clause 7 for Wales, there is no intention to set up Children's Trusts in Wales.[159]

b. Lords consideration

During the Committee stage, Lord Northbourne argued that the vast majority of those with parental responsibility for children "can be and are the key players in delivering the goals which we are all trying to achieve for all children", and advocated an amendment to address the fact that the Bill did not mention any "proposal to work with parents, listen to parents, empower parents and respect parents", saying that was a "very grave mistake".[160]

During the Report stage, Baroness Ashton moved amendments, that were subsequently agreed to, which she said constituted a "strong statement from the Government about their understanding of and respect for the critical importance of parents and carers to the well-being of children". She added that the amendments:

> require the children's services authority to have regard to this in making the arrangements under the clause. In doing so, they suggest that the arrangements should support parents and carers and therefore not undermine their role—a sentiment that always underlies the noble Lord's comments. The amendment also ensures that the role of parents and carers is properly reflected in the legislation in a way that does not lead to bureaucratic intrusion in their lives.[161]

During Committee stage, Baroness Sharp tabled an amendment, which was not moved, to add General Practitioners (GPs) to the list of relevant partners of a local authority who must, together, co-operate to improve the well-being of children. Baroness Ashton noted that Primary Care Trusts, which were already included in the list of relevant partners, "is the body that has the responsibility in a local area to identify health needs and to deliver or to commission primary care as appropriate. GPs are connected to that through their contracts with the primary care trust [PCT]. In guidance we shall make it clear that PCTs must specify that GP practices, including all health staff working in them, co-operate in the arrangements. We believe that that is the best way to achieve what the noble Baroness seeks".[162]

A similar point was raised in connection with the duties to make arrangements to safeguard and promote the welfare of children by Earl Howe. Baroness Ashton provided a written response, highlighting that this duty was placed on Primary Care Trusts, among others, which meant that "in making arrangements for the provision of primary medical

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[159] *Explanatory Notes*, para 120
[160] HL Deb 20 May 2004 cc942–943
[161] HL Deb 20 May 2004 c970
[162] HL Deb 20 May 2004 c937

services, PCTs must ensure that any [GP] contractor … provides services in such a way to safeguard and promote the welfare of children".[163]

During the Committee stage debate, Baroness Sharp noted that, although Youth Offending Teams (YOTs) were highlighted in the explanatory notes to the Bill, they were not included in what became clause 7 and therefore not under a statutory obligation to co-operate in order to improve children's well-being.[164] The Government accepted the point, and at Report stage added YOTs to the list of "relevant partners", saying it was the "the best way to secure the involvement of youth offending teams in local co-operation arrangements".[165]

In order to address issues of a non-financial matter in relation to co-operation, such as the provision of accommodation for a multi-disciplinary team, the Government moved amendments at Report stage in order to address concerns raised by peers at Committee stage. The amendments, Baroness Ashton explained, sought to make it "absolutely clear that partners can support their co-operation arrangements with contributions of non-financial resource … We need local partners to be aware that pooling their budgets as part of their co-operation arrangements can be complemented by providing non-pecuniary resource. This includes staff, goods, services, accommodation or other resources".[166] The amendments were agreed to.

In addition, an amendment was moved and agreed to at Report stage to include recreation in the definition of a child's well-being. However, an amendment to add the phrase "the need for a nutritious diet" was withdrawn, after Baroness Andrews said that such a concern was implicit in the Bill as it stood; she argued that in order to improve the "the physical and mental health" well-being of children, they "need a good diet for good health".[167] Other amendments, which sought to add housing and equality of opportunity to the definition, were withdrawn.

Clause 8 seeks to ensure that the safeguarding and promotion of children's welfare is taken into account by stated bodies in discharging their functions. The clause passed through the House of Lords unamended, although there was considerable debate at Committee stage in regard to broadening the range of agencies to which it applied, in particular to the British Transport Police which Baroness Ashton said she would explore.[168] At Third Reading, Earl Howe tabled an amendment to include immigration-related agencies; Baroness Ashton argued against the amendment, saying that both the Immigration Service and the National Asylum Support Service (NASS) "understand their

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[163] Department for Education and Skills, *Letter from Baroness Ashton to Earl Howe*, 28 June 2004, Dep 04/1389
[164] HL Deb 20 May 2004 c927
[165] HL Deb 17 June 2004 c989
[166] HL Deb 17 June 2004 c998
[167] HL Deb 17 June 2004 c978
[168] HL Deb 20 May 2004 c978

responsibilities and are strongly supportive of the need to safeguard children and promote their welfare";[169] on division, the amendment was excluded by a majority of 9.

c. The Bill as it currently stands

The Government explained that the purpose of clause 7 is to "create a statutory framework for local co-operation between local authorities, key partner agencies ('relevant partners') and other relevant bodies ('other bodies or persons'), including the voluntary and community sector, in order to improve the well-being of children in the area".[170]

Subsection 2 states that such co-operation arrangements are "to be made with a view to improving the well-being of children in the authority's area" in relation to the following: physical and mental health; protection from harm and neglect; education, training and recreation; the contribution made by them to society; and emotional, social and economic well-being.

The clause introduces the term "children's services authority", which is defined by clause 52 as simply being a high level local authority (e.g. a county council, or a London borough council). Each children's services authority, under subsection 1, has a duty to "make arrangements to promote co-operation" within itself and between its "relevant partners" and others whom the authority considers "appropriate". Such arrangements, though, must have regard to the role of parents and other people caring for children (subsection 3).

Subsection 4 sets out the list of "relevant partners": district councils, where applicable; the local police; the local probation board; the local youth offending team; the Strategic Health Authority and Primary Care Trust in the area; the Connexions Service in the area; and the Learning and Skills Council for England. Under subsection 5, the relevant partners have a duty to co-operate with the children's services authority in making co-operation arrangements.

Subsections 6 and 7 allow a children's services authority and its relevant partners to provide staff, goods, services, accommodation or other resources, and to establish and maintain a pooled fund in respect of its duties under clause 7.

Subsection 8 allows the Secretary of State to issue guidance which those with duties under this clause must have regard to. In regard to what guidance is likely to be issued, the Government states:

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[169] HL Deb 15 July 2004 c1464
[170] *Explanatory Notes*, para 44

> It is likely that the guidance will set out the outcomes expected of these arrangements. These include: effective working together to understand the needs of local children, agreeing the contribution each agency should make to meet those needs, effective sharing of information at a strategic level and about individual children to support multi-agency working, and oversight of arrangements for agencies to work together in integrated planning, commissioning and delivery of services as appropriate. The guidance will, in particular, make clear that, for the local authority and Primary Care Trust and other participating services (e.g. Connexions, Youth Offending Teams) these arrangements should include consideration of integrated commissioning in the delivery of children's services. There will also be guidance as to the kinds of other bodies and persons referred to in subsection (1)(c) which the local authority may involve in these arrangements [such as voluntary organisations].[171]

Further information on the guidance can be found at:

http://www.dfes.gov.uk/everychildmatters/word/PolicyStatementsLocalTransformation.doc

Subsection 9 extends the coverage of this clause to people 18 and 19 years of old, as well as persons over 19 receiving services as care leavers under the *Children Act 1989* and persons under 25 with learning difficulties receiving services under the *Learning and Skills Act 2000*.

Clause 8 complements clause 7 by stating that specified agencies must make arrangements to ensure that their functions are discharged (including by third parties) having regard to the need to "safeguard and promote the welfare of children". This phrase is the same as that used in the *Children Act 1989*, for example in section 17 which states "It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part) to safeguard and promote the welfare of children within their area who are in need … by providing a range and level of services appropriate to those children's needs".

The Government said that the aim of this duty is to "ensure that agencies give appropriate priority to their responsibilities towards the children in their care or with whom they come into contact [and] encourage agencies to share early concerns about safety and welfare of children and to ensure preventative action before a crisis develops".[172] Those specified agencies are similar to those to whom clause 7 applies, but also include NHS Trusts and NHS Foundation Trusts.

In order to prevent an overlap with section 175 of the *Education Act 2002*, subsection 3 disapplies this requirement in respect of Local Education Authorities (LEAs), schools and further education colleges.

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[171] *Explanatory Notes*, para 49
[172] *Explanatory Notes*, para 51

Subsection 4 allows the Secretary of State to issue guidance which those with duties under this clause must have regard to. There already exists similar such guidance, entitled *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*. The Government says that it aims to build on this guidance and "provide the relevant organisations with principles within which to work and examples of good practice. The effect at both operational and strategic level will be explained".[173]

Margaret Hodge said that the powers in clauses 7 and 8 were, "for the first time", putting "clear responsibility in two ways on other professionals [in addition to local authorities] who work with children, and that is by putting a duty on [those] people … to safeguard and protect children and promote their well-being and they will have a duty to cooperate with each other. So by creating those two new duties, we think we have answered the criticisms about accountability that were in … [Lord] Laming's report on Victoria Climbié".[174]

The Local Government Association (LGA) supported these measures, saying that a "local strategic planning structure is a fundamental underpinning to delivering the vision for children's services. This body is central to developing a clear vision locally and will ensure that all key agencies support the delivery of the local plan for improving children's outcomes".[175]

Clause 21, in respect of Wales, is very similar to clause 7 although one notable difference is that the arrangements made to co-operate to improve well-being are not made with a view to improving children's emotional well-being, as is the case under clause 7(2)(e). In regard to people other than children who should be included in co-operation arrangements, unlike clause 7, clause 21 does not state an upper-age limit in respect of persons receiving youth support services. This is because the Welsh provisions of the *Learning and Skills Act 2000* are limited to those under 26 years of age. However, for the same provision in England, the stated upper-age in clause 7 is "under the age of 25".

It will be the NAfW, rather than the Secretary of State, who issues guidance under clause 21. The explanatory notes state:

> 119. This guidance will be used to give a statutory basis to the Children and Young People's Framework Partnerships and Children's Partnerships that are already in existence.[176] It will rationalise their relationship with the

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[173] Department for Education and Skills, *Policy Statements: Local Transformation Section* (hereafter *DfES Policy Statement*), paras 17 and 19, see: http://www.dfes.gov.uk/everychildmatters/word/PolicyStatementsLocalTransformation.doc

[174] *Ed&Skills Cttee (uncorrected transcript)*, Q24

[175] Local Government Association, *LGA briefing—Children Bill and Every Child Matters: Next Steps*, 5 March 2004 (hereafter *LGA briefing*), p2

[176] See: http://www.wales.gov.uk/subichildren/content/partnership/item%20c%20english.pdf

> Young People's Partnerships that already have a statutory basis under section 123 of the Learning and Skills Act 2000.
>
> 120. The guidance will be used to explain the expected practical manifestations of co-operation between the core partners and wider relevant bodies, including the voluntary sector and users of services. These will include: effective working together to understand the needs of local children and young people, agreeing the contribution each agency should make to meet those needs, effective sharing of information at a strategic level, and integrated planning of services. The guidance will, in particular, make clear that there is no expectation that Children's Trusts will be created in Wales.[177]

Clause 23 makes a similar provision to clause 8 for Wales, allowing the NAfW to issue guidance to those bodies listed in the clause 23 for which responsibility has been devolved, and for the Secretary of State, after consulting the NAfW, to issue guidance to the others.

2. Information databases *(by Philip Ward, Home Affairs Section)*

Clause 9 of the Bill creates a power for the Secretary of State to require the establishment of databases containing information about children. The purpose of such databases would be to facilitate contact between professionals who are supporting individual children or who have concerns about their development, well-being or welfare with the aim of securing early, coherent, intervention. These purposes relate directly to the overarching duties on service providers to co-operate to promote the well-being of children (clause 7) and to safeguard and promote the welfare of children (clause 8). Clause 9 sets out the principles that would govern information sharing using the information databases, including the basic information that is to be included in respect of all children. The detailed operational requirements will be set out in affirmative procedure regulations and, for more technical matters, in directions and guidance issued by the Secretary of State for Education.[178]

a. Background and commentary on the original Bill

Last year the Green Paper, *Every child matters*, set out the Government's thinking on ways to improve information sharing. At a practical level, ten "Trailblazers", involving fifteen local authorities, have each been given £1 million to develop and test new ways of information sharing and multi-agency working. All other upper-tier local authorities have been allocated up to £100,000 each to do some preparatory work to lay the foundations for information sharing.[179]

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[177] *Explanatory Notes*, paragraph numbers as shown
[178] Meaning that motions approving them will have to be passed by both Houses.
[179] *Every Child Matters*, pp52–57

The Government's response to the consultation on the Green Paper acknowledged some concerns, albeit stating that there was support for the proposal:

> Consultees were supportive of the proposals to improve and support information sharing. The main barrier identified to sharing information about children identified was concern about confidentiality and the impact of data protection legislation. Many stressed the need for a national lead on standards and system design.[180]

The Government's response to the consultation went on to add that:

> Decisions on the detail of the Regulations and guidance including the geographical level at which databases are to be set up – have yet to be made, and will draw on the work of the Identification, Referral and Tracking (IRT) Trailblazer local authorities on independent technical advice and feasibility work. We would therefore urge local authorities not to rush into decisions on IT investment at this stage.[181]

A number of organisations expressed concern about the data sharing provisions of the Bill when it was first published. For example, the National Family and Parenting Institute (NFPI) had reservations about a possible threat to privacy.[182] The Local Government Association expressed general support for information sharing but entered caveats:

> We do not want to see the focus becoming purely around improving the technical ability of information sharing. It must be about managing cultural and behavioural change amongst professionals … The databases that are developed need to be compatible with systems in other authorities so that children do not slip through the net when they move between authorities, as well as compatible with systems that are used by other services within each authority.[183]

The House of Lords' Delegated Powers and Regulatory Reform Committee was especially critical, arguing that too much important detail was being left to secondary legislation:

> 19. The delegation of power in clause 8 is very wide indeed. We note that a number of important matters are left to be set out in the regulations. These include: the information kept; disclosure for the purposes of compiling the database; disclosure of the information contained in the database; and access to the database to add or read information. In addition, there is no specific provision about onward transmission of information by someone who has obtained it in accordance with the regulations.

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[180] *Every Child Matters*, p20
[181] *Every Child Matters: Next Steps*, p21
[182] National Family and Parenting Institute, *NFPI comments on Children Bill*, press notice, 4 March 2004, see: http://www.nfpi.org.uk/templates/whatsnew/press.cfm/204
[183] *LGA briefing*

> 20. The only significant limitation on the regulation-making power is that the Secretary of State may establish and operate the database, or require its establishment and operation, only for the purposes of arrangements under clause 6 (arrangements to promote co-operation between local and other public authorities and certain others), clause 7 (arrangements to be made by local and other public authorities and certain others to safeguard and promote welfare of children), and section 175 of the Education Act 2002 (which is also about the welfare of children).
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> 21. We also draw the attention of the House to two specific aspects of the power in clause 8 which illustrate its scope. Clause 8(6) enables the regulations to leave to the discretion of the person running a database what may or must be done by way of permitting or requiring the disclosure of information. Although paragraph 33 of the DfES's memorandum explains that this provision is to cater only for small or voluntary organisations, we note that, as drafted, it is of general application in the bill. Clause 8(7) enables regulations to override the common law duty of confidence. Paragraph 34 of the memorandum indicates that this will enable a practitioner to disclose information where he or she believes it is in the best interests of the child. But the power (read with clause 8(4)(b)) can also be used to require a practitioner to disclose information even if he or she does not consider it to be in the child's best interests.
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> 22. We further note that guidance or directions (subject to no Parliamentary scrutiny) may, under subsection (8) and (9)(a), specify conditions on which access to the database must or may be given. The directions are legally binding and, if intended to be of general application, have much of the character of legislation. We consider that conditions (other than as to technical specifications, etc.) which are generally applicable either to all persons or bodies operating databases, or such persons or bodies of a particular type, should be in the regulations, not in directions.
>
> **23. Despite the importance and sensitivity of their subject matter, clauses 8 and 23 are, in effect, "skeleton" provisions only. We have in the past expressed particular concern about such broad delegations and invite the House to decide whether the more significant aspects of the provision in clauses 8 and 23 should be included on the face of the bill.[184]**

In response to these concerns, the DfES published in April a 9-page document outlining the regulations and statutory guidance to be issued under the database clause. The document is available on the DfES website.[185] This document provides more detail than had hitherto been seen on the topics which have caused concern, such as the specific basic

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[184] Delegated Powers and Regulatory Reform Committee, *Twelfth Report of Session 2003-04*, 25 March 2004, HL 62 2003–04 (hereafter *HL DPRR Cttee*), pp4–5, paragraph number as shown, see: http://pubs1.tso.parliament.uk/pa/ld200304/ldselect/lddelreg/62/62.pdf

[185] Department for Education and Skills, *Policy statement on regulations and statutory guidance to be made under clause 8 of the Children Bill*, 29 April 2004 (hereafter *DfES Database Policy Statement*), see: http://www.dfes.gov.uk/everychildmatters/word/clause8policystatement.doc

data about all children to be included on databases and the bodies and individuals who will be required or permitted to supply data to the databases.

It sets out three levels of information to be held on the databases (to which access may be given differentially). The highest level of confidentiality, the third, is the one at which a practitioner who has concerns about a child can flag his concerns as a means of alerting other professionals. The document also promises that, as a minimum, access to the databases will only be granted to individuals who have complied with stated requirements. These requirements are that they have:

- clearance from the Criminal Records Bureau;
- undertaken training on safe and secure use of the system, including training on compliance with the *Data Protection Act 1998*, the *Human Rights Act 1998* and the "Caldicott principles" (where appropriate);[186] and,
- signed a relevant "practitioner-level protocol" (the mechanism by which certain people or groups will have access to information at various levels of detail).

b. Lords consideration

When the Bill was introduced into the Lords, the database clause (originally numbered 8, now clause 9) attracted much criticism as being no more than a "skeleton" provision. At Second Reading, Baroness Ashton admitted that people had concerns about the new database(s):

> The appropriate and responsible sharing of information is something that practitioners make judgments about all the time. It is a part of their jobs. We know that there are concerns about when it is appropriate to share information and often it is difficult for practitioners to get past even the first hurdle of finding out who else has an interest in the welfare or well-being of a child. So the measures we are taking are about supporting people who work with children in exercising their professional judgment.
>
> […]
>
> I cannot stress enough, however, that the IT system will support professional judgment, not replace it. It will not remove the need for professionals to talk to each other. It will help them to do so more confidently and more effectively.
>
> The database record would be accessible only to practitioners working with the child who need the information to do their jobs. It will not hold case information from a child's files, but the minimum core of information that will enable professionals to establish links—such as the child's name, address, the name of their GP and school or other educational setting, the contact details of any

[186] The "Caldicott principles" are six principles laid down by the NHS Executive governing the use of patient-identifiable information within the NHS.

> specialist services dealing with the child and the fact that any practitioner has a concern about the child.
>
> So where, for example, a health worker had a concern about a child, they would take any appropriate action in their own area of practice, but would also be able readily to see which other practitioners were involved with that child. In one place they would be able to find the details of a social worker involved with the child or to discover that a housing officer had recorded a concern. They could then quickly confer with those other professionals to identify the child's overall needs and how best to meet them.
>
> It is crucial to get details such as access arrangements and technical specifications right. To do this we need to be informed by experience. As well as learning from the pilots under way in 15 local authorities, we are also seeking expert technical advice. To allow for this work to be done, we think it is right for many of these details to be set out in secondary legislation. But we also recognise that these technical details are sensitive and deserve proper scrutiny by the House. With this in mind we have ensured that they are subject to the affirmative resolution procedures. We are also mindful of the comments made last week by the Delegated Powers and Regulatory Reform Committee. Ahead of the Committee stage, we will consider what further detail we might practically include on the face of the Bill.[187]

For the Conservatives, Earl Howe expressed dissatisfaction:

> Clause 8 is a charter for Ministers to devise information-sharing schemes of an unspecified and potentially far-reaching nature, overriding common-law rights of confidentiality and without necessarily paying heed to the fundamental principles of data protection.
>
> I have very serious difficulties with this. In the first place, Ministers are consigning to secondary legislation not simply detailed issues of implementation but major decisions of policy. As a matter of principle, that is unsatisfactory. Much more needs to be spelt out on the face of the Bill. One gets no sense of what information-sharing arrangements the Government regard as being proportional to the problem; who should be allowed access to the databases and in what circumstances; what kinds of information should be stored; or even whether the databases will record details of all children or only those who give rise to a concern. There are numerous practical questions as well which remain unresolved. I am not necessarily resisting the concept of having databases. However, I firmly resist the idea of writing the Government a blank cheque for future regulations.[188]

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[187] HL Deb 30 March 2004 cc1212-3
[188] HL Deb 30 March 2004 c1217

When the Bill reached Report stage in the Lords the Government introduced several amendments designed to put more detail "on the face of the Bill".[189] One, which was passed, spells out what information is to be held on the database. The explanatory notes on the Commons Bill give this summary:

> *Subsection (4)* describes the information to be held on the database. The basic data to be held for all children comprises: name; address; gender; date of birth; a unique identifying number; name and contact details of any person with parental responsibility or who has day to day care of the child; details of any education being received whether in an educational institution or other setting; name and contact details of a GP practice. The subsection also provides for the inclusion of the name and contact details of any practitioner providing a specialist service (of a kind to be specified in the regulations) to a child and the fact that a practitioner has a concern about a child. No material relating to case notes or case history about an individual may be included on the database, but the flexibility exists to require the inclusion of further basic data, for example to provide for future organisational change.[190]

After Report stage, the amended subsection 4 allowed for the database to hold "information of such other description as the Secretary of State may by regulations specify"; this was subsequently amended by the Government to "information of such other description, *not including medical records or other personal records*, as the Secretary of State may by regulations specify [emphasis added]", after concerns were raised.[191]

At Committee stage in the Lords, Baroness Ashton said that the Government was considering how best to make arrangements for practitioners to be able to signal to each other the existence of a concern. Returning to the point at Report stage, she announced:

> We are not proposing any amendment to the Bill, but we are committed to consult publicly this autumn on how this aspect of the database should operate to inform our regulations and guidance. That will be a formal consultation under Cabinet Office rules. It will provide us with an opportunity to gain reactions from practitioners, children and young people, families and other interested parties on specific propositions on how practitioners should indicate the existence of a concern on their part. It will be a public consultation and among the issues to be addressed we shall examine the language and the phraseology to be used to describe what is to be done—indeed, the terminology and the flags of concern.[192]

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[189] HL Deb 5 July 2004 cc573–574
[190] *Explanatory Notes*, para 61
[191] Clause 9(4)(h). Government amendment passed at Third Reading in the Lords (HL Deb 15 July 2004 cc1475–1476)
[192] HL Deb 5 July 2004 cc574–575

c. The Bill as it currently stands

In the form in which clause 9 was brought from the Lords, the key points are as follows:

Subsection 1 grants the Secretary of State powers to require children's services authorities to establish databases or to establish one or more databases himself. The wording throughout the clause oscillates between singular and plural, leaving it to regulations to specify whether there will be one unified database or a number of linked ones. Regulations will stipulate that these databases are to be universal—that is, they will cover *all* children, not just some targeted group among children.[193]

Subsection 4 lists the categories of information which may be held on the database(s). These will include a unique identifying number (not necessarily correlated with the child's NHS number or any other existing identifier). Also to be recorded are "details of any education being received" by the child. These details would include the name and address of a school, nursery or further education college, or record if the child were being educated at home.

In addition, subsection 4 allows for "information as to the existence of any cause for concern" to be held, which drew this response from the National Association for the Prevention of Cruelty to Children (NSPCC):

> The NSPCC is alarmed at the Government's proposals that the local databases should register 'concerns', a vague and intangible concept. Not only does this compromise children's rights, it may also make them less safe for three reasons: it may drive some sections of population under-ground; it will result in too much data and too little information, with practitioners being unable to distinguish key facts amidst a plethora of low quality irrelevances; some professionals may see recording a concern in an IT system as an alternative to doing something about it, therefore leaving a child at greater risk.[194]

Barnardo's expressed similar views, arguing that

> for information sharing to be effective, professionals working with children and families need to have a common understanding of the kinds of information that should be recorded and shared. Different professions will interpret 'cause for concern' in a range of ways, dependent on their professional background. Barnardo's would like [this] subsection to be amended to read 'information which gives reasonable cause to suspect that a child is suffering, or is likely to suffer,

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[193] *DfES Database Policy Statement*, para 3

[194] National Society for the Prevention of Cruelty to Children, *NSPCC briefing on Children Bill—Second Reading Commons*, August 2004

> risk of significant harm'. This would establish a commonly understood threshold amongst professionals reflecting the provisions of the *Children Act 1989*.[195]

Subsection 6 specifies who is required or permitted to add information to the database(s). This is another instance where originally skeletal provisions were tightened up by Government amendments in the Lords. A distinction was created between those "required" and those "permitted" to contribute and basic lists were added to the Bill of persons and organisations falling into each category.[196] Subsection 7 lists those required to contribute; subsection 8 those permitted to do so. In each category there is a miscellaneous group comprising "person[s] or bod[ies] of such other description as the Secretary of State may by regulations specify".

Although welcoming the narrower drafting of the Government amendments, Barnardo's argued that this does not go far enough:

> We are again concerned at the breadth of this subsection. We feel it is essential that the range of people and bodies submitting information to the database is carefully controlled to ensure that the database does not become overloaded with inappropriate or unhelpful information, and that quality of information recorded on the database remains high. […] As the Bill stands, a registered social landlord, potentially an individual with no experience of working with children and families will be able to enter their 'concerns' on the database. We feel this increases the likelihood of inaccurate or even prejudicial information being recorded and shared, without offering any concrete benefits for children and young people.[197]

Subsection 6 also provides for regulations specifying who will have access to the database(s) and under what conditions, how accuracy is to be maintained and for how long information will be retained.[198]

Subsection 11 provides a waiver from the common law duty of confidentiality for those contributing to or accessing the database(s). According to the Explantory notes, "such a power would be relied upon where practitioners believe, in their professional judgement, that it is in the best interest of the child to share information about that child."[199]

Subsection 13 allows for the Secretary of State to issue guidance or directions on such matters as database security and subject access rights under the *Data Protection Act 1998.*

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[195] Barnardo's, *Barnardo's briefing on Government amendments to the Children Bill: Lords report stage* (hereafter *Barnardo's briefing*), 23 June 2004

[196] Amendments passed without debate (HL Deb 5 July 2004 cc595–596)

[197] *Barnardo's briefing*

[198] The database(s) will normally hold information only up to the child's 18th birthday, after which it will be deleted. The *Sunday Times* (art. cit.) asserts that the clause is designed to create a national population register by the "back door".

[199] See: http://www.publications.parliament.uk/pa/cm200304/cmbills/144/en/04144x-a.htm

Throughout the passage of the Bill so far, the Government has stressed that it is not seeking to change data protection law in any respect or to make any special dispensations for the proposed database(s).[200]

In July, a story appeared in the *Sunday Times*, purportedly based on "leaked" Cabinet papers, which implied that the Government is considering introducing further amendments to the database clause in the Commons.[201] The article alleges that the Government envisages a "central electronic register", that is, a "national database". There was some discussion during the Lords stages as to whether it would be a national database or a series of interlinking local ones. This flexibility is preserved in the Bill as it currently stands:

> This clause [i.e. clause 9] creates a power for the Secretary of State by regulations made by affirmative resolution procedure to require local authorities to establish and operate a database or databases of information about all children and other young people to whom arrangements under clause 7 or 8 or section 175 of the Education Act 2002 may relate *(subsection (1)(a)).* Alternatively, the Secretary of State may set up such databases himself and he may set up a body corporate to operate such databases *(subsections (1)(b) and (2)).* Such databases might be set up at a local, regional or national level.[202]

The other claims made in the article appear to ignore the principle under subsection (4)(h) that "no material relating to case notes or case history about an individual may be included on the database":

> The central electronic register will hold information on a child's school achievements, GP and hospital visits, police and social services records and home address. It will also include information on their families, such as whether parents are divorced or separated.[203]

Clause 24 makes an identical provision for Wales as clause 9 does for England, save that the NAfW, rather than the Secretary of State, can issue guidance and give directions.

3. Local Safeguarding Children's Boards

a. Background and commentary on the original Bill

Currently, Area Child Protection Committees (ACPCs) are the forums in which representatives of each of the main agencies and professionals responsible for helping to protect children from abuse and neglect are brought together. An ACPC is a "multi-

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[200] See, for example, Baroness Ashton's comments at HL Deb 24 May 2004 c1099.
[201] "All children to go on 'big brother' computer", *Sunday Times*, 25 July 2004 (hereafter *Sunday Times article*), p1
[202] *Explanatory Notes*, para 57
[203] *Sunday Times article*, p1

agency forum for agreeing how the different services and professional groups should co-operate to safeguard children in that area, and for making sure that arrangements work effectively to bring about good outcomes for children".[204] Although each local authority should have an ACPC, there is no statutory duty to do so.

In the Joint Chief Inspectors' Report, *Safeguarding Children*, the inspectors found a number of failings with the ACPCs they inspected, in particular that "ACPCs did not command the authority to require local agencies to report on how they undertook their safeguarding duties". In particular, they found that few ACPCs had representatives from YOTs. The inspectors recommended that the Government should "Review the current arrangements for Area Child Protection Committees to determine whether they should be established on a statutory basis to ensure adequate accountability, authority and funding".[205]

Similarly, Lord Laming found that "Proposals for reforming ACPCs received wide support. Although many do good work, they seemed widely to be regarded as lacking 'teeth'. They had no real authority over their constituent agencies and did not provide the strategic leadership needed".[206] He recommended that each local authority should establish a "Management Board for Services to Children and Families", chaired by the local authority's Chief Executive.[207]

The Green Paper accepted this recommendation, and proposed the establishment, on a statutory basis, of Local Safeguarding Children's Board (LSCBs) to replace ACPCs,[208] a move supported by the LGA.[209] Margaret Hodge highlighted the key differences between ACPCs and LSCBs to the Education and Skills Committee, noting that the creation of LSCBs would be:

> an important change because it puts the body on a statutory basis and we will issue guidance for them. Taking that outcome of the safety of children, we are really giving that a much stronger statutory framework than we are the other outcomes. The ACPCs were not statutory, not every authority took them seriously. The new Local Safeguarding Boards are statutory, every one has got a duty to safeguard and protect and everybody has got a duty to co-operate. That is the first thing that is different. The second thing that is different is that ACPCs focus so far mainly on protection and on doing the Section 8 inquiries and we are

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[204] Department for Education and Skills, *ACPC roles and responsibilities*, website, see: http://www.dfes.gov.uk/acpc/rolesandresponsibilities/#roles

[205] Department of Health, *Safeguarding children: a Joint Chief Inspectors report on arrangements to safeguard children*, October 2002 (hereafter *Joint Chief Inspectors report*), pp5 and 8, paras 1.26, 1.29 and 2.4, see: http://www.dh.gov.uk/assetRoot/04/06/08/33/04060833.pdf

[206] *Victoria Climbié Inquiry Report*, p356, para 17.55,

[207] *Victoria Climbié Inquiry Report*, p372, recommendations 6 and 7

[208] *Every Child Matters*, p74, para 5.25

[209] *LGA briefing*, p3

> saying that the new Safeguarding Boards will be looking at safeguarding as well as protection, so that means they move more into the prevention field.[210]

The Government said that it expected the chair of an LSCB to be the Director of Children's Services (see section IV.B.1), "unless it is considered more appropriate locally to have an independent chair". The Government argued that "The Director of Children's Services will have overall accountability to the Local Authority which is ultimately responsible for ensuring adequate safeguarding arrangements".[211]

b. Lords consideration

During the Committee stage, Earl Howe tabled an amendment that a local authority Chief Executive should chair the proposed LSCBs, as recommended by Lord Laming in regard to the equivalent Management Board for Services to Children and Families that he proposed. Earl Howe noted that the Bill did not offer a prescriptive approach as to who should chair an LSCB, saying "On one level I applaud that. But, in doing so, it is laying a bear trap". He described the approach taken by the Government to the issue of who should chair LSCBs as "fundamentally wrong", arguing that:

> There is only one person who should chair a local safeguarding children board. That is the person who takes ultimate responsibility for everything that goes on in a children's services authority—its chief executive. To allow someone independent to chair the board makes no sense at all. To have the director of children's services has more logic to it, but it is still not right. The proper role of the director of children's services to report to the board and to inform it; not, I suggest, to take charge of it.[212]

Baroness Ashton defended the wording of the Bill, arguing that chairing an LSCB "required knowledge at a level of detail that perhaps was not consistent with the work of the chief executive who, necessarily, needs to have a strategic overview".[213]

Earl Howe withdrew his amendment, but tabled it again at Report stage, when Lord Laming added his support to it:

> There is a serious issue of principle here concerning accountability. I believe that two aspects of this issue are of overriding importance. First, the director of children's services should be accountable to the board, and therefore should not chair the board. Secondly, one of the local authority's premier responsibilities is to safeguard the vulnerable children in its area. If it is not too onerous to require the chief officer of the police service or a governor of a prison to be present at the

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[210] *Ed&Skills Cttee (uncorrected transcript)*, Q124
[211] *Every Child Matters: Next Steps*, p16, para 2.17
[212] HL Deb 24 May 2004 c1162
[213] HL Deb 24 May 2004 c1165

> board, in my view it is certainly not too demanding that the chief executive of the local authority should be required to do so.[214]

Baroness Ashton argued that the Bill should not be prescriptive as to who should chair the LSCBs, and the amendment was withdrawn.[215]

Amendments were also tabled to add other organisations to the list of LSCB partners, including the Crown Prosecution Service, immigration agencies (in line with the views of the Joint Committee on Human Rights[216]), and YOTs (in line with the Joint Chief Inspectors' findings). Only the amendment concerning YOTs was agreed. On the matter of the immigration services, Baroness Ashton argued that:

> we do not think that it is necessarily appropriate for either the Immigration Service or the NASS to be required to be represented. Immigration issues tend to be geographically focused. We think it would be better for these organisations to be invited to join the local safeguarding boards as non-core members in areas where such issues are very important and relevant—obvious examples are Hillingdon [Heathrow Airport] and Kent—rather than being required to sit on the boards.[217]

c. The Bill as it currently stands

Clause 10 concerns the establishment of LSCBs. Subsection 1 makes it a duty for each children's services authority to establish a LSCB, which must includes representatives of the children's services authority and its "Board partners". Under subsection 7 the children's services authority must co-operate with the Board partners, and *vice versa*.

Subsection 3 lists the "Board partners" as: district councils (if applicable); the chief police officer; local probation board; youth offending team; Strategic Health Authority and Primary Care Trust; NHS trusts and NHS foundation trusts; Connexions; Children and Family Court Advisory Support Service (CAFCASS); the governor or director of any secure training centre; and the governor or director or any prison which ordinarily detains children, that fall within the area of the children's services authority. Subsection 2 states that the Secretary of State can, by regulations, determine which representatives are to sit on the Board. The DfES explains:

> The regulation making power in this clause has been taken so that the Government can specify what level or mix of representatives from local authorities and Board Partners should be included on LSCBs. Regulations will allow partners to be represented communally as long as it in a sensible way and will not impede effectiveness (so, for example, all the Primary Care Trusts in an

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[214] HL Deb 21 June 2004 c1025
[215] HL Deb 21 June 2004 c1027
[216] *JCHR Fifth Progress Report*, p8, para 1.21
[217] HL Deb 24 May 2004 c1167

> area might agree to be represented by a single PCT who is authorised to speak for them all).
>
> The intention is that guidance will address the issue of the level of representative from each partner organisation required to participate in the LSCB. However, if it is found that organisations are not fielding representatives with sufficient seniority to enable Boards to operate effectively, this clause enables the Government to impose requirements by regulations … It may also be helpful to specify the mix of representatives, e.g. from health services, to ensure that one sector (e.g. primary care trusts or district councils) does not dominate.[218]

Subsection 4 allows the Secretary of State to add, by regulations, further Board partners to the list, and the children's services authority must take "reasonable steps" to ensure their representation, and subsection 5 allows the children's services authority flexibility to include representatives of other organisations, after consulting their Board partners; the Government expects this will be the normal way in which LSCB membership is broadended.[219] Such additional partners have to be "exercising functions or engaged in activities relating to children in the area of the authority in question" under subsection 6.

Subsection 8 allows for two or more children's services authorities to meet their duty by creating a joint LSCB for their combined area. Baroness Andrews explained that "The provision is simply providing flexibility, particularly for the smaller children's services authorities such as the Isles of Scilly. If we were to remove this subsection we would remove an important aspect of flexibility". She added:

> On accountability, the subsection does not allow children's services authorities to delegate their duty to another authority. Where a joint LSCB is established, each participating children's services authority will retain its functions in relation to that board and will participate fully. Should it turn out that one of the authorities that has made the partnership is attempting to reduce its participation, I believe we can safely rely on the local authority partner or partners to ensure that that does not happen, or that the arrangement is brought to an end. Therefore, there is a powerful element of self-regulation.[220]

Clause 11 sets out the functions and procedures of an LSCB, including their objective: to co-ordinate and manage the effectiveness of their contributions of those represented on the Board for the purposes of safeguarding and promoting the welfare of the children covered by the LSCB. Function and procedures for LSCBs can be made by regulations under subsections 2 and 3. The explanatory notes to the Bill explain that the functions of the LSCB set out in the regulations "will largely be based on the functions of their predecessor bodies, Area Child Protection Committees … and will support the overall

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[218] *DfES Policy Statement*, paras 32–33
[219] *DfES Policy Statement*, para 34
[220] HL Deb 24 May 2004 c1173

objective of the Board".[221] Further details are provided by the DfES as to the LSCBs' likely functions:

> (1) **strategic planning** to support the relevant local children and young people strategic planning partnership and ensure that adequate plans are in place to safeguard children across all the relevant agencies.
>
> (2) **'preventive' work** covering:
>
> (i) Child protection – i.e. activity to protect children in respect of whom concerns have been expressed.
>
> (ii) Safeguarding – i.e. the prevention of abuse and neglect more generally, encompassing community awareness-raising, support for families, etc.
>
> (iii) Prevention of harm – where this is in scope of the responsibilities of Board partners collectively.
>
> Guidance will, in particular, confer on Local Safeguarding Children Boards a function to ensure inter-agency co-operation in the safeguarding of children who are privately fostered.
>
> (3) improving the quality of child protection work and of inter-agency working through specifying needs for **interagency training** and development, and ensuring that training is delivered.
>
> (4) **establishing screening teams** to investigate each sudden, unexpected child's death, liaising with current statutory systems, and reach conclusions about whether and how it could have been prevented.
>
> (5) **commissioning serious case reviews**, to be chaired by an independent person, along the lines set out in Part 8 of Working Together to Safeguard Children (1999).[222]

In regard to the procedure regulations, the DfES states that the aim of these regulations will be to "ensure that LSCBs are able to secure the involvement of all Board partners … [and] will support LSCBs to respond to problems such as non-attendance or non-compliance by any Board member".[223]

Clause 12 concerns the funding of LSCBs, and allows the children's services authority that established the LSCB, and any of the LSCB's board members, to contribute financially and non-financially (by providing "staff, goods, services, accommodation or other resources") to the cost of establishing and running the LSCB. It also allows a pooled fund to be established in regard to an LSCB.

Subsection 1 of clause 13 allows the Secretary of State to make regulations to provide for the functions of the children's services authority in relation to LSCBs. This is distinct from the regulation-making power in clause 11. The necessity of this subsection was explained by Baroness Andrews:

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[221] *Explanatory Notes*, para 77
[222] *DfES Policy Statement*, para 35
[223] *DfES Policy Statement*, para 36

> Each LSCB is a body made up of representatives of partner agencies and does not have a legal personality of its own—it cannot employ its own staff. Therefore, we need to be able to give children's services authorities the ability to do that on behalf of the LSCB. The general duty imposed on the children's services authority to establish LSCBs would involve doing what was necessary to enable the LSCB to perform its functions. So to some extent those matters can be covered in guidance. However, there are limits to the use of guidance, which is why we have included Clause 12(1) in the Bill.
>
> The sort of matters that we envisage including in the regulations are administrative support, other support services and appointing a screening team, which I mentioned earlier. Clause 12(1) ensures that we can make those regulations and that they have the necessary support. It is thus essential that it stands as part of the Bill.[224]

Subsection 2 of clause 13 states that a children's services authority and its fellow LSCB members must have regard to guidance issued by the Secretary of State. The explanatory notes explain that the guidance "may, for example, set out how contributions may be made in cash or kind, how arrangements should be made for investigation of unexpected child deaths, and provide further detail about the functions and management of LSCBs".[225]

The Government expects the guidance to replace and build on the information in its *Working Together to Safeguard Children* document. Specifically, the DfES said it will: provide a framework for working together to safeguard and promote the welfare of children; describe how actions to safeguard children fit within the wider context of support to children and families; outline the role of LSCBs within this; set out the processes which LSCBs will be expected to follow; detail the particular responsibilities of LSCBs; explain the accountability framework for LSCBs; outline the processes which should be followed when a child dies unexpectedly; provide guidance on child protection in specific circumstances, including on safeguarding disabled children; emphasise the importance of multi-agency training, and discuss training requirements for effective child protection; highlight the measures for ensuring co-operation between Board partners; and, provide good practice examples of multi-agency working to safeguard children.[226]

The subsection is necessary because the Secretary of State's power under section 7 of the *Local Authority Social Services Act 1970* to issue guidance does not extend to "forward partners" of local authorities, a category into which LSCBs fall.[227]

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[224] HL Deb 24 May 2004 c1177
[225] *Explanatory Notes*, para 82
[226] *DfES Policy Statement*, para 40
[227] HL Deb 24 May 2004 c1177

Clauses 25 to 28 make provision for LSCBs for Wales on the same basis as clauses 10 to 13 for England, save that in Wales regulations will be made and guidance given by the NAfW rather than the Secretary of State.

Clause 47 adds LSCBs to the list of social services functions within the meaning of the *Local Authority Social Services Act 1970*; a consequence will be that the Commission for Social Care Inspection will be responsible for inspecting LSCBs.

B. Local authority administration

1. England

a. Background and commentary on the original Bill

In his report, Lord Laming recommended that the Management Board for Services to Children and Families (see section IV.A.3.a) should be required to appoint a director who would be "responsible for ensuring that inter-agency arrangements are appropriate and effective, and for advising the Board on the development of services to meet local need".[228]

Responding to this recommendation, the Government, in its Green Paper, said that it "intends to legislate at the next available opportunity to require all local authorities to appoint a Director of Children's Services. The Director would be accountable for education and social services and for overseeing services for children delegated to the local authority by other services".[229]

Explaining the rationale for the new post, Margaret Hodge told the Education and Skills Committee: "What we are putting into the Bill is clear accountability, and the buck will stop with the director of children's services reporting up to the chief executive and the lead member of the children's services reporting up to the council. So that is where the buck will stop organisationally there".[230]

The Government foresaw that, as a direct consequence of this new post, "in time this will lead to a single Children's Department in most authorities", but added "we will not require it". Explaining this policy, Margaret Hodge said:

> I think if we had dictated to local authorities: "You must organisationally respond in a particular way that I think is the right way", I think that would have been, well, I know it would have been viewed as an enormous interference in the local authority's own determination of how they organise themselves … As an old localist, I would feel wrong if I told them they have got to do it in this way. I

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[228] *Victoria Climbié Inquiry Report*, p372, recommendation 8
[229] *Every Child Matters*, p70, para 5.8
[230] *Ed&Skills Cttee (uncorrected transcript)*, Q21

> think the other thing to say is it will be different, but it depends. A big county council may have to deal with lots of different PCTs—remember we are trying to integrate children's health services as well—and Kent would be an example of that. For us to say there is one organisational structure that meets Kent in the same way as it meets Rutland as it meets Manchester as it meets Southampton I think just would be inappropriate. It is just inappropriate.[231]

The Government said that "In legislating to require the appointment of a Director of Children's Services, the Government will ensure that there is sufficient flexibility for all local authorities to make this change in a way which fits their local circumstances, minimises disruption and maintains service standards". Adding further to the point that local authorities would maintain some discretion over the remit of the new Director, it added that "The responsibilities of the Director of Children's Services must include children's social services and education but need not be limited to these services: the Director may also be responsible, for example, for housing or leisure services".

The Government said that local authorities "will be expected to set up clear transitional arrangements which secure as soon as possible an appropriate single point of accountability for children's services", and suggested that the Chief Executive or current Chief Education Officers or Directors of Social Services could take this role.[232]

However, *Community Care* magazine recently reported on an Association of Directors of Social Services survey of 95 directors which found that there may be a lack of existing Directors of Social Services, at least, who will wish to apply for the post of Director of Children's Services:

> **Children's services facing director drain**
>
> Uncertainty over how many directors of social services will take up the top posts in children's services is continuing to grow.
>
> Community Care understands there is widespread concern that many experienced social services directors will take early retirement rather than apply for children's services directorships. It is believed that the Department for Education and Skills envisages assistant directors as the natural choice for the job.
>
> One London social services director said the majority of directors would not want the job because it was too big and too different from what they did now. Many would prefer early retirement to a job with an unknown scope, and assistant directors would be too inexperienced for the step up.[233]

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[231] *Ed&Skills Cttee (uncorrected transcript),* Qq39–40
[232] *Every Child Matters*, p70, para 5.10
[233] *Community Care*, 19 August 2004, see: http://www.communitycare.co.uk/articles/article.asp?liarticleid=45981&liSectionID=22&sKeys=director+children+services&liParentID=26

Following the Green Paper proposals for a Director of Children's Services and the comments made in the consultation process, the Government said that they had "refined our proposals to ensure we get the right balance between national standards and local flexibility".[234]

The Green Paper announced proposals for a lead council member for children,[235] a move which the Government subsequently said had been welcomed.[236]

b. Lords consideration

Earl Howe tabled an amendment to prevent a Director of Children's Services from holding any other local authority post, while Baroness Thomas advocated that a children's services authority, rather than the Government, should determine when their Director should be in post. Baroness Andrews said in regard to this latter point that it was a necessary "safeguard" to have a set date by which the appointment should be made, adding "we are clear—which is why we cannot agree with the amendment—that there will come a stage when this must become a duty for all authorities". In regard to Earl Howe's amendment, she said that "The flexibility about a joint appointment is there as a matter of flexibility and necessity", but added "We do not expect there to be wide use of the power … We are confident that local authorities will use the power appropriately and after due consideration".[237]

c. The Bill as it currently stands

Clause 14 states that a children's services authority has to appoint an officer to the position of Children's Services Director by the appointed day (although it may do so before that day). The stated functions of the Director are: "local authority education functions (other than functions specified in relation to adults); social services functions for children; functions in relation to young persons leaving care; functions conferred on the authority under clauses 7 to 9 of this Bill; any functions delegated to the authority by an NHS body under section 31 of the Health Act 1999, so far as relating to children".

In addition, the Secretary of State may, under subsection 1(b), confer, by regulations, additional functions on the Director, and, under subsection 3(e) remove education functions not listed in subsection 3. Under subsection 5 the children's services authority can also add to the Director's functions, for example in relation to adult education (by virtue of subsection 6), even though this is ordinarily excluded from a Director's remit under subsection 3.

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[234] *Every Child Matters: Next Steps*, p18, para 2.28
[235] *Every Child Matters*, p70, para 5.11
[236] *Every Child Matters: Next Steps*, p19, para 2.30
[237] HL Deb 24 May 2004 cc1179–1180

The Government states that the Bill "allows wide flexibility in the way authorities construct the Director's role":

> **Functions:** the Bill specifies that the Director should cover as a minimum the functions relating to children and young people that currently fall to Chief Education Officers and Directors of Social Services. Legislation will provide for adult social services to continue to be led by a Director and nothing in our proposals will diminish this important role. Statutory guidance will confirm that authorities will be free to decide whether to add adult education, adult social services, housing, leisure or other services to the Director of Children's Services' brief.
>
> **Level:** the intention behind the legislation is to create a Director of Children's Services at Chief Officer or Deputy Chief Executive level. Local authorities will want to consider carefully how this role should be constituted. The legislation does not rule out the possibility of a Chief Executive discharging this role alongside his or her other duties. The feasibility of this approach will depend on whether a Chief Executive is able to give a personal focus to children's services, and may, for example, be appropriate as a transitional arrangement. Integrated inspection will be the test of whether any such arrangements are securing the necessary outcomes for children.
>
> **Flexibility over structures to support Director:** it will be for authorities to determine what organisational structures will be needed and how delegation and line management responsibilities should operate in support of the Director. The legislation does not say how the Director's functions are to be discharged. A Director at Chief Officer level could, for example, be supported by separate posts for school improvement and/or child safeguarding. Guidance will ask local authorities to consider what sort of organisational structure is needed to support the Director. The test will be whether outcomes for children improve, as monitored through the normal assessment arrangements and the new integrated inspections.
>
> **Timescale:** the Bill will not set a deadline for appointments but Ministers will be monitoring progress and will consider in the light of progress when the requirement should take legal effect. The expectation would be that most areas should have a Director of Children's Services by 2006 and all by 2008.[238]

The children's services authority must have regard to the Secretary of State's guidance issued in relation to post of a Director of Children's Services. The DfES states that the guidance will "outline the roles and responsibilities of the Director of Children's Services", adding:

> 50. The guidance for Directors of Children's Services will set out the minimum statutory functions of the post and make clear that authorities

[238] *Every Child Matters: Next Steps*, pp18–19, para 2.29

> will have discretion to add other functions to the Director's remit. Guidance will be clear that it is for authorities to determine the organisational arrangements needed to support the Director. Guidance will not focus on how the Director's functions should be discharged, but will instead concentrate on clear accountability with the appointment of a Director of Children's Services and, as a result of this appointment, better outcomes and services for children through improved co-ordination of children's services within the local authority. Guidance will also outline the crucial role the Director will play in leading local change and local co-operation arrangements.
>
> 51. The guidance will also describe the appropriate level of seniority for the post: normally this should be a person at chief officer level who directly reports to the Chief Executive as the head of paid service. Guidance will not rule out these responsibilities being exercised by a Chief Executive, but will emphasise that taking on this role would be challenging in addition to his or her other duties; it may be appropriate as a transitional arrangement. The feasibility of this approach will depend on whether a Chief Executive is able to give sufficient personal focus to children's services alongside his or her other duties.
>
> 52. In addition, guidance will highlight the key role the Director of Children's Services should play in leading transformational change across local services and in driving through cultural change to ensure greater coherence in service delivery and better outcomes for all children.
>
> 53. Guidance will set out the role the Director of Children's Services should play in relation to Children's Trusts, Local Children Safeguarding Boards and in following-up findings of joint area reviews of children's services.[239]

Subsection 8 allows two or more children's services authorities to appoint a joint Children's Services Director.

Subsection 10 states that the "appointed day", by which all children's services authorities must have appointed a Director, is to be determined by the Secretary of State. The Government says that it "expects most authorities to appoint a Director … by 2006, and all to do so by 2008".[240]

Schedule 2 will make consequential amendments to existing legislation to take account of the new post of Children's Services Director in English children's services authorities. One notable change will be that local authorities will, under the *Local Authority Social Services Act 1970*, have to create a new post of Adult Social Services Director, to cover

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[239] *DfES Policy Statement*, paragraph numbers as shown
[240] *DfES Policy Statement*, para 46

the remaining functions of the existing post of Director of Social Services which are not subsumed by the post of Director of Children's Services. In addition, councils will no longer be required to appoint a Director of Education Services.

Clause 15 requires a children's services authority to make an elected council member the "lead member for children's services" in respect of the functions of the authority set out in clause 14, plus any other functions that the children's services authority designates the lead member. The Secretary of State can issue guidance in relation to the lead member, which the explanatory notes state will be guidance on "which member should be designated as the lead member (depending on individual authorities' constitutional arrangements), and the role and responsibilities of the lead member";[241] these are expected to "broadly mirror those of the Director of Children's Services, but … the Lead Member will be expected to have a particular focus on child protection".[242]

2. Wales

There will not be a requirement under the Bill for a Director of Children's Services to be created in Welsh local authorities, at the request of the NAfW.[243] Instead, clause 22 states that a children's services authority in Wales must appoint a "lead director for children and young people's services", in order to co-ordinate and oversee the co-operation between the children's services authority and its relevant partners under clause 21. The explanatory notes state:

> This will not affect the existing service delivery responsibilities of the Chief Education Officer and the Director of Social Services. It is anticipated that an existing director, or even the chief executive, will usually be appointed as the 'lead director'. The lead director will ensure that the partnership planning process is given a high profile within the local authority and acts as a driver for strategic planning for children and young people in the local authority area.[244]

In addition, an elected council member must be designated as "lead member for children and young people's services" to "have as his special care the discharge of the authority's functions under that section", but may also hold other responsibilities.[245]

Similar obligations apply to local health authorities ("as the local authorities' most significant statutory partners in providing services for children and young people") to appoint lead executive and non-executive directors (in the case of an NHS trust) and a

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[241] *Explanatory Notes*, para 100
[242] *DfES Policy Statement*, para 54
[243] *Every Child Matters: Next Steps*, pp22–23, para 2.51
[244] *Explanatory Notes*, para 121
[245] *Explanatory Notes*, para 121

lead officer and member (in the case of a Local Health Board) to deal with the co-operation planning arrangements under clause 21.[246]

The NAfW can issue guidance in respect of these positions, although it is expected that "this guidance will be integrated with that under clause 21".[247]

C. Inspection

1. Joint area reviews

a. Background and commentary on the original Bill

In July 2003, the Prime Minister's Office of Public Sector Reform published a report entitled *Inspecting for improvement* which considered how inspections could be improved, and reported:

> In summary, this is what we think needs to be done:
>
> - Clear priorities and performance criteria are needed for service providers, against which the inspectorates can assess performance and contribute, however indirectly, to service improvement.
> - The commissioners of inspection in the public sector need to make it easier for the inspectorates to work together.
> - Inspectorates should adopt the ten principles set out in this report, including a continuing commitment to demonstrating their own value for money.[248]

In response to the report, the Government issued a document entitled *The Government's Policy on Inspection of Public Services*, which was "based on the Government's understanding of best practice in inspection" derived from the *Inspecting for improvement* report.[249]

In the Green Paper, the Government said that it was "committed to ensuring inspection captures how well services work together to improve children's lives within a framework that is consistent with the recommendations of the recent Office for Public Services Reform review. To do this, we intend to create an integrated inspection framework across children's services".[250] The Government said that these joint reviews would "bring together joint teams to carry out area-based inspections of education, social services,

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[246] *Explanatory Notes*, para 122
[247] *Explanatory Notes*, para 123
[248] The Prime Minister's Office of Public Sector Reform, *Inspecting for improvement*, July 2003, p36, see: http://www.number-10.gov.uk/files/pdf/inspecting.pdf
[249] The Prime Minister's Office of Public Sector Reform, *The Government's Policy on Inspection of Public Services*, July 2003, p1, see: http://www.number-10.gov.uk/files/pdf/policy.pdf
[250] *Every Child Matters*, p76, para 5.36

Connexions, youth services and child health services and drawing on the work of other inspectorates".[251]

The Government explained that "Integrated inspection is designed, explicitly, to improve children's lives. It will enable us, through Joint Area Reviews (JARs), to draw together for the first time a wide range of inspection findings determined by a common approach through the Framework, of what it is like to be a child in a local authority area".[252]

The inspection, which would feed into the Comprehensive Performance Assessment, would lead to a published report which would assess and give a rating for the quality of provision overall, as well as service by service, and the inspection would also assess the quality of joint working such as information sharing and multi-disciplinary teams. The Government expects that "An integrated inspection framework would be a powerful force to secure genuine integration of local authority services under the new Director of Children's Services, and to encourage a quicker move to [Children's] Trusts bringing together health and other services".[253]

b. Lords consideration

Lord Northbourne tabled an amendment that sought to require inspectors to consult the Children's Commissioner, children and those with parental responsibility for children. Baroness Ashton said that "consulting with children, parents and others with parental responsibility is central to our plans for the inspection of children's services", but argued that "We do not believe that the [children's] commissioner would generally be able to provide the local insight that would assist inspectors of joint area reviews".[254]

The Government moved amendments which were agreed to, one of which will allow regulations to be made to create a criminal offence where an inspection is hindered either in regard to information or access to premises.

c. The Bill as it currently stands

Clause 16 sets out the background to JARs, which, under subsection 5, are to be conducted by: the Chief Inspector of Schools; the Adult Learning Inspectorate; the Commission for Social Care Inspection; the Commission for Healthcare Audit and Inspection; the Audit Commission for Local Authorities and the National Health Service in England and Wales; the chief inspector of constabulary; Her Majesty's Chief Inspector of the National Probation Service for England and Wales; Her Majesty's Chief Inspector of Court Administration; and the Chief Inspector of Prisons.

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[251] *Every Child Matters*, p76, para 5.36
[252] *DfES Policy Statement*, para 57
[253] *Every Child Matters*, *Green Paper*, pp76–77, paras 5.38 and 5.40
[254] HL Deb 24 May 2004 c1185

Subsection 4 explains that "The purpose of a review under this section is to evaluate the extent to which, taken together, the children's services being reviewed improve the well-being of children and relevant young persons", where the term "relevant young persons" has the same meaning as in clause 7(9).

Clause 19(3) defines the term "children's services" as being "any services provided for, or anything else done for or relating to, children and relevant young persons (regardless of whether provided or done to children and relevant young people alone or also with adults) which are subject to assessment by the inspectorates listed in clause 16 and which are specified in or of a description prescribed by regulations made by the Secretary of State".[255]

The times and intervals at which such reviews of "children's services" are to be conducted will be determined in regulations. The DfES states that "Regulations will enable an initial 3-year programme where every authority receives at least one JAR to establish a baseline. Frequency and timing will be reviewed thereafter in light of experience of the first round and will be carried out in inverse proportion to success, related both to frequency and to depth of coverage".[256]

In addition, the Secretary of State can request two or more of the listed inspectorates to conduct a review of any children's services in an area he specifies. Those requested are obliged to conduct the review.[257] Alternatively, two or more of the listed inspectorates can undertake a review on their own initiative under subsection 3.

Her Majesty's Chief Inspector of Schools in England (i.e. the head of OFSTED, the Office for Standards in Education) is to be responsible for devising the arrangements for JAR, and must consult with the other listed inspectorates "as he considers appropriate". The Chief Inspector of Schools' annual report must include an account of the JARs undertaken.

Subsections 9 to 11 concern the Secretary of State's regulation-making powers in relation to JARs. Subsection 9 allows regulations to be made in respect of sharing or producing information, and also entering a premises, for the purposes of a review under this section (including provision for the creation of criminal offences).

In relation to information, the DfES clarifies that "In each case it will be for the lead inspector for the JAR to determine which bodies will be requested to produce information," but notes that "the principles being adopted for integrated inspection of children's services include making use, as far as is possible, of existing documentation

[255] *Explanatory Notes*, para 113
[256] *DfES Policy Statement*, para 72
[257] *Explanatory Notes*, para 104

and systems of the organisations inspected to avoid placing unnecessary burdens on service providers".[258]

The power to make regulations in relation to entering a premises drew the attention of the House of Lords *Delegated Powers and Regulatory Reform Committee*, who commented that it "would seem to allow regulations to enable those conducting a review to enter the domestic premises of those to whom children's services have been provided. We draw the attention of the House to the width of this power and suggest that the House may wish to invite the Government to justify such provision".[259]

In reply, the DfES said "The power will not be used to provide for any new rights of entry. It simply allows for the existing rights of entry held by inspectorates to be used for the purpose of Joint Area Reviews".[260]

Further regulations can be made under subsection 9 to require a report to be written on each JAR, and for specified (in regulations) persons to produce a written statement in response to a report, as well the timeframe for action to be taken in response to comments in a report. In addition, the requirement to undertake an inspection and, for example, an inspection report under another piece of legislation can be disapplied by regulations, in order to prevent duplication.

Clause 17 states that, in addition to making arrangements for JARs, the Chief Inspector of Schools must also devise a framework for the inspection of children's services. In doing this, he must consult with the inspectorates listed in clause 16.

The framework is to set out the principles to be applied by anyone conducting an assessment i.e. an inspection, review (including a JAR), investigation or study, in order to "ensure that relevant assessments properly evaluate and report on the extent to which children's services improve the well-being of children and relevant young persons".

The framework is to be published after appropriate consultation and after the consent of the Secretary of State have been gained, but can be revised at any time. A discussion paper, entitled *Every child matters: inspecting services for children and young people* was published in May 2004 and considers the implications for inspection arising from the *Children Bill*.[261]

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[258] *DfES Policy Statement*, paras 73–74
[259] *HL DPRR Cttee*, p5, para 24
[260] *DfES Policy Statement*, para 75
[261] Department for Education and Skills, *Every child matters: inspecting services for children and young people*, May 2004, see: http://www.dfes.gov.uk/everychildmatters/word/inspectoratesdiscussionpaper.doc

Clause 18 will mean that those conducting an assessment of children's services have a statutory duty to co-operate with, and may delegate any of their functions to, others with such functions.

Clause 20 will mean that separate performance ratings (i.e. a star rating) will be made in respect of services to children and all other social services provided by a local authority. At present, a single social services rating is given although underlying this are separate judgments about adults' and children's services.[262] Under the *Health and Social Care (Community Health and Standards) Act 2003*, if the Commission for Social Care Inspection awards the lowest possible performance rating to either service, the CSCI must, under section 81, inform the Secretary of State of that fact and recommend any special measures which it considers the Secretary of State should take.

[262] *Keeping Children Safe*, p23, para 108

V Parts 4 and 5: CAFCASS and Miscellaneous provisions

A. Part 4: Devolution of CAFCASS provision in Wales

1. Background to CAFCASS

The Children and Family Court Advisory and Support Service (CAFCASS) began operation on 1 April 2001. Established by the *Criminal Justice and Courts Services Act 2000*, CAFCASS brought together the services of the Family Court Welfare Service, the Guardian *ad Litem* Services and the Children's Division of the Official Solicitor.[263]

CAFCASS has recently been subject to criticism by the former Select Committee on the Lord Chancellor's Department (now the Constitutional Affairs Committee), who found "serious failings in the establishment and management of the new Service".[264] In response, the Government asked the board of CAFCASS to resign (all but one did) and appointed a new chairman.[265]

2. The proposed devolution of CAFCASS in Wales

a. Background and commentary on the original Bill

In evidence before the Welsh Affairs Committee on 17 September 2003, Margaret Hodge said the DfES was starting to think about the issue of devolving responsibility for CAFCASS to the NAfW.[266] In its consideration of the issue, the Welsh Affairs Committee concluded: "We believe that the interests of children and young people in Wales would be best served by a transfer of powers and resources over CAFCASS in Wales to the National Assembly for Wales, and we recommend that the Government make a commitment to that effect at the earliest opportunity".[267]

In their reply to the Report, the Government said:

> The Government accepts this recommendation and will implement the transfer when the necessary arrangements are in place to ensure a smooth transition that is in the best interests of children and families in Wales.
>
> An agreement has been reached with the Welsh Assembly Government on the funding and organisational arrangements. The Children Bill contains clauses that

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[263] CAFCASS, *Introduction: the organisation*, website, see: http://www.cafcass.gov.uk/English/aboutcafgcass/introduction.htm

[264] Committee on the Lord Chancellor's Department, *Children and Family Court Advisory and Support Service (CAFCASS)*, 23 July 2003, HC 614–I 2002–03, p5, see: http://pubs1.tso.parliament.uk/pa/cm200203/cmselect/cmlcd/614/614.pdf

[265] HC Deb 11 December 2003 c605W

[266] *WelshAff Cttee (Empowerment)*, Q556

[267] *WelshAff Cttee (Empowerment)*, p29, para 82

will give powers to transfer the work and powers of CAFCASS in Wales to the National Assembly for Wales. CAFCASS, their staff in Wales, the President of the Family Division, and other stakeholders are being consulted on these details.[268]

b. Lords consideration

The technical details surrounding the transfer of CAFCASS functions and powers for Wales to the NAfW attracted debate on only one amendment during the Lords stages, which was tabled by Earl Howe and concerned CAFCASS cases with a cross-border element.[269] Baroness Andrews argued that the amendment was unnecessary because there are to be "operational protocols to deal with this [cross-border placements] on a case-by-case basis [which] are strong because they have been well worked out".[270]

c. The Bill as it currently stands

In regard to clauses 29 to 31, Baroness Andrews highlighted that "CAFCASS in Wales will operate under exactly the same framework of primary legislation and court rules. The responsibilities that the Assembly will take on for the functions in Wales are exactly the same as those of CAFCASS in England".

Clause 32 will allow the NAfW, with the consent of the Secretary of State, to request Her Majesty's Inspectorate of Court Administration to inspect the discharge by the Assembly of its functions in regard to the Welsh CAFCASS, and the discharge by Welsh family proceedings officers of their functions.

Clause 33 applies the *Protection of Children Act 1999* to the NAfW in regard to its CAFCASS functions. The Act set up "the framework of a coherent cross-sector system for identifying people unsuitable to work with children" and a 'one stop shop' to compel or allow employers to access a single point for checking the names of people they propose to employ in a post involving the care of children.[271]

Clause 34 bring Schedule 3 into effect, which makes supplementary and consequential amendments to existing enactments.

Clauses 35 and 36 allow for the transfer of property, rights and liabilities, and staff from the existing CAFCASS to the new Welsh service. If a member of staff objects to being transferred, subsection 5 states that they will be dismissed "immediately before the date

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[268] Welsh Affairs Committee, *The Government Response to the First Report of the Committee Session 2003-04: The Empowerment of Children and Young People in Wales*, 6 April 2004, HC 459 2003–04, p6, see: http://pubs1.tso.parliament.uk/pa/cm200304/cmselect/cmwelaf/459/459.pdf

[269] HL Deb 27 May 2004 c1449

[270] HL Deb 27 May 2004 c1450

[271] *Protection of Children Act 1999: Explanatory Notes*, Act 14-EN, para 3, see: http://www.legislation.hmso.gov.uk/acts/en1999/1999en14.htm

of transfer but the employee is not to be treated, for any reason, as having been dismissed by CAFCASS".

B. Part 5: Miscellaneous provisions

1. Private fostering

a. Background and commentary on the original Bill

Victoria Climbié's great-aunt pretended to be her mother; however, if the true nature of the relationship had been disclosed, the authorities would have considered it to be a private fostering arrangement.

At present, sections 66 to 70 and clause 8 of the *Children Bill 1989* are concerned with private fostering, together with the *Children (Private Arrangements for Fostering) Regulations 1991* (SI 1991/2050). The legislation applies to children under 16 (or under 18 if they are disabled), but not those who are being privately fostered for a period of less than 28 days where the foster carers do not intend to continue to provide care beyond this period.

Local authorities have a duty to "satisfy themselves" that the welfare of children who are privately fostered within their area is being "satisfactorily safeguarded and promoted". The local authority has the power to inspect premises where privately fostered children live, as well as inspect any children living there, and take action to remove the children if they are "not satisfied" that a privately fostered child's welfare is being satisfactorily safeguarded or promoted.

Under the regulations, local authorities have a check-list of factors to ascertain the welfare of a privately fostered child. The child is visited, and can be seen alone, in the first week of the private fostering arrangement, and then again at intervals of not more than six weeks for the first year; after the first year, the child is to be visited at intervals of not more than three months.

The regulations also place a foster carer under an obligation to inform the local authority that they are caring for a child in a private fostering arrangement within specified timescales, and also when the arrangement ends; under section 70, it is an offence not to comply with these requirements.

The foster carer must also provide details of any of their background which may make them ineligible to be a foster carer under section 68 (see also *Disqualification from Caring for Children (England) Regulations 2002*, SI 2002/635 and *Disqualification from Caring for Children (Wales) Regulations 2002*, SI 2002/896) or section 69 of the *Children Act 1989*.

The British Association for Adoption and Fostering (BAAF) noted that "The duty to notify local authorities (Children Act l989) that a child has been privately fostered is

widely ignored, partly through ignorance or reluctance on the part of carers and parents to bring such arrangements to the attention of the authorities". Without notification, "the local authorities are not able to check whether the carers may be disqualified persons", concluding that there is currently "an inadequate system of regulation".[272]

In addition, BAAF highlighted that parents wishing to make private arrangements for their children "receive no help in identifying suitable people from their local authority, as no register is maintained and there is no approval mechanism".[273]

The arguments for and against the registration of private foster carers were heard during the progress of the *Care Standards Bill* through Parliament in 2000, when an amendment was tabled: "Any person who privately fosters a child under the age of 16 for a consecutive period of 28 days or more without being registered under this Part shall be guilty of an offence". The Government rejected the amendment, saying it did not "consider that there is a need to extend further the wide range of offences associated with private fostering … we consider that the current regulations concerning private fostering are adequate as long as they are enforced".[274]

During the passage of the *Adoption and Children Bill* though Parliament in 2002, an amendment was moved during Lords' Grand Committee stage to insert a new clause to require the registration of private foster carers, which the Government argued against, saying "if a heavy-handed regulatory approach were adopted, it might succeed only in pushing private fostering further underground".[275]

The Government commissioned a "Private Fostering Review" which was undertaken in 2002 and focused on the current legal framework, and whether it is robust enough to protect vulnerable children.[276] However, according to Earl Howe, the Review was not made publicly available.[277]

A January 2003 report by the Social Care Institute for Excellence, entitled *Effectiveness of Childminding Registration and its Implications for Private Fostering* noted that "Both childminding and private fostering arrangements are based on parental choice. Both types of childcare are essentially private arrangements (for reward) between parent and provider". The key difference between the two is that "whereas childminding involves primary carers placing their children in the temporary care of someone else, private foster children remain in the continuous care of their foster care provider". The report said

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[272] British Association for Adoption and Fostering, *Children Bill Briefing for Second Reading*, 30 March 2004 (hereafter *BAAF briefing*), p2, see: http://www.baaf.org.uk/docs/childrenbillbriefing.pdf

[273] *BAAF briefing*, p2

[274] HL Deb 10 January 2000 c516

[275] HL Deb 4 July 2002 c195GC

[276] Department for Education and Skills, *The Children Act Report 2002*, June 2003, p5, see: http://www.dfes.gov.uk/childrenactreport/docs/DfES-Childrens%20Act.pdf

[277] HL Deb 21 June 2004 c1069

"Childminding registration offers a baseline safeguard to parents wishing to choose this type of substitute care for their children. Registration of private foster carers would provide a pool of approved providers from whom parents could select a suitable person to look after their child(ren)'s welfare".[278]

In his report, Lord Laming also drew upon the comparison with child-minders. He summarised the current position regarding the registration of private foster parents, and contrasted it to the position regarding that of child-minders:

> 17.12 Under current regulations, prospective foster parents must tell the local authority of private foster care arrangements. There is also an obligation on parents who are involved in having a child privately fostered. There is no duty, however, to approve or register private foster parents. It has to be recognised that a large number of children who are privately fostered do not become known to the authorities.
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> 17.13 For children who live with their parents but go to a childminder every day, the position is different. Local authorities must keep a register of childminders and the registration system is based on the person being "fit" to look after children. The local authority must also inspect the premises annually. It is an offence to provide daycare for children without being registered.
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> 17.14 There was general agreement – with which I concur – that this inconsistency in the law should be removed. These issues were fully reported by Sir William Utting in the document *People Like Us* … The Government should review the law regarding the registration of private foster carers.[279]

Sir William Utting's 1997 report, *People Like Us*, was a review of the safeguards for children living away from home. The review was established in response to "continuing revelations of widespread sexual, physical and emotional abuse of children in children's homes over the preceding 20 years".[280] Sir William noted that "private fostering is clearly an area where children are not being safeguarded properly, indeed an unknown number are likely to be seriously at risk",[281] and concluded:

> As the present arrangements do not appear workable as they stand, it is proposed that private foster carers should be required to seek approval and registration from a local authority before taking on any children … To do so without registration should be a criminal offence. It should also be an offence for parents

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[278] Social Care Institute for Excellence, *Effectiveness of Childminding Registration and its Implications for Private Fostering*, January 2003, p3, see: http://195.195.162.67/publications/positionpapers/pp01.pdf

[279] *Victoria Climbié Inquiry Report*, pp350–351 and 372, paragraph numbers as shown and recommendation 11

[280] Department of Health and Welsh Office, *People Like Us*, 1997 (hereafter *People Like Us*), p1

[281] *People Like Us*, p44, para 3.73

> to place a child with unregistered foster carers. Local authorities should vet private foster carers in the same way as other foster carers and should visit children in line with the current Regulations.[282]

The Government said in its *Next Steps* document that "The Bill makes provision for new measures to strengthen the existing Children Act private fostering notification scheme. The Bill contains a power to enable a registration scheme for private foster carers to be established in the event that the strengthened notification scheme is found wanting. This power will cease if not used within four years of Royal Assent".[283]

Responding to the proposals, BAAF commented before Second Reading in the Lords that:

> While we are pleased that the Children Bill does contain the power to establish registration systems in England and Wales, we are disappointed that the Government does not intend to utilise these powers immediately. We welcome very much the proposed improvements contained in clause 36 but fear that these will not be sufficient to provide the protection needed for some of the most vulnerable children in the country.
>
> […]
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> We would wish to urge the Government, therefore, to implement immediately the powers contained in clauses 37 and 38, and to make regulations requiring private foster carers who intend to care for children under 11 to be approved and registered. We appreciate that there may be different issues arising for older children in private foster carers, and would accept that registration provisions for this group of children could await the outcome of the monitoring that will, if regulations are brought in for this purpose, be undertaken by local authorities under clause 36(6). Four years is however a relatively short period in which to establish the information necessary, and we would therefore propose that the period in clause 39 after which registration powers would cease, should be extended to six years.[284]

b. Lords consideration

At Committee stage, an amendment was tabled which would, if passed, have had the effect of creating a registration scheme for private foster carers where they were caring for children under the age of eleven. Baroness Barker said "We have believed for a long time that a registration scheme would be beneficial and effective".[285] However, Baroness Ashton argued that:

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[282] *People Like Us*, pp45–46, para 3.80
[283] *Every Child Matters: Next Steps*, p21, para 2.43
[284] *BAAF briefing*, pp1–2
[285] HL Deb 27 May 2004 c1452

> For privately fostered children under the age of 11, my concern is that if we were to go down the route of a private fostering scheme, we should have it for all children and young people that we are concerned about, and not simply for that age group, though I understand entirely the reasons why that has been put forward. We want to see how the notification scheme works out first, on the basis of a greatly enhanced scheme that will ensure that we develop those links appropriately.[286]

At Report stage, an amendment was tabled to bring forward the introduction of the registration scheme, which again was resisted by the Government which argued that it was "not convinced that a registration scheme will work better than the Bill's provisions to enhance the existing notification scheme. That is partly because we believe that the existing scheme provides a robust framework of safeguards and that the Bill's provisions will make it even stronger".[287]

c. The Bill as it currently stands

Clause 37 will make amendments to the current *Children Act 1989* notification scheme. The amendments in subsections 2 to 5 extend the duties of local authorities in cases where a child is proposed to be, but is not yet, privately fostered.[288] Subsection 6 will allow the Secretary of State in England, or the NAfW in Wales, to make regulations to require a local authority to monitor the effectiveness of the private fostering notification scheme, for example by "keeping a record of notifications received, monitoring compliance with timescales for visits and recording any prohibitions or requirements imposed along with reports of any visits and the outcomes of notifications".[289] Subsection 7 will place a duty on local authorities to "promote" public awareness of the need for private foster carers to provide notification.

Clauses 38 and 39 create a registration scheme for private foster carers in England and Wales respectively through regulations. However, the registration scheme may only come into force within four years of the Bill receiving Royal Assent (under clause 40); if regulations are not made in England within the four year period, the power in clause 38 expires even if regulations have been made under clause 39 in Wales (and *vice versa*).[290]

It is intended that this four year gap will allow the modifications to the notification scheme to be assessed in order to determine whether they are sufficient, or if further action is required. However, because clause 37 is subject to a commencement order, the modifications to the notification scheme might not come into effect until some time after Royal Assent; this would mean that a decision on whether to introduce the registration

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[286] HL Deb 27 May 2004 c1458
[287] HL Deb 21 June 2004 c1072
[288] *Explanatory Notes*, para 152
[289] *Explanatory Notes*, para 159
[290] *Explanatory Notes*, para 178

scheme would have to be made less than four years after the commencement of the enhanced notification scheme.

In explaining why the timescale to introduce the registration scheme is limited to four years, Baroness Ashton said: "The four-year period is specifically designed to make us examine the schemes, get them up and running, assess them and then determine, quite quickly, whether they are working. We think that we will know quickly whether they are working. That is the opposite of wanting a clause that we can ignore and do nothing about, so that it all fades away".[291]

In deciding whether to bring the registration scheme into force, Baroness Ashton set out how the Government would review the amended notification scheme: "We shall carry out an annual data collection exercise on notification rates … We will consider the new duties on local authorities to comply with the Children Act and the associated regulations, partly through inspection. We will decide whether we believe … that we are moving in the right direction".[292] The explanatory notes additionally stated that the potential cost and manpower implications of introducing a registration scheme "are factors that will be taken into account in deciding whether to implement the regulation making powers in clauses 38 and 39".[293]

Although clauses 38 and 39 offer only a framework for the registration scheme, with the detail to be provided in any subsequent regulations, the House of Lords' Delegated Powers and Regulatory Reform Committee said "Although we draw the attention of the House to the width of the powers in clauses 37 and 38, the delegation is, in our view, sufficiently circumscribed to make it appropriate in this instance".[294]

2. Child minding and day care

Clause 41 brings Schedule 4 of the Bill into effect. Schedule 4 makes "minor amendments" to Schedule 9A of the *Children Act 1989*, which was introduced by the *Care Standards Act 2000*, and largely seeks to provide clarification.[295]

Paragraph 4 will allow the registration authority (currently OFSTED) more flexibility to charge fees, as it will no longer be required to only charge an annual fee.

Paragraph 6 will transfer, from OFSTED to the employer, the burden of responsibility for ensuring that every person looking after children on a particular premises is suitable to look after children under the age of eight, and every person living or working on the

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[291] HL Deb 27 May 2004 c1461
[292] HL Deb 27 May 2004 c1461
[293] *Explanatory Notes*, para 226
[294] *HL DPRR Cttee*, p6, para 27
[295] *Explanatory Notes*, para 180

premises is suitable to be in regular contact with children under the age of eight. The explanatory notes state:

> As part of its determination as to whether the applicant is qualified for registration, the registration authority will check that the employer has appropriate procedures in place to make suitability assessments, thereby enabling him to qualify for registration. The registration authority will continue to assess the suitability of the person in charge of a day care setting and to assess that the applicant is qualified for registration under section 79F.[296]

Paragraph 7 will, in the future, allow people disqualified from registration to have a financial interest in day care, and "limits the scope of the prohibition relating to management to disqualified persons who are directly concerned with the management of day care".[297]

3. Intervention in local authority services

The Secretary of State already has powers to intervene in the running of local authorities with respect to their duties in respect of social services and their duties under the *Children Act 1989*. If the Secretary of State is satisfied that any local authority failed, without reasonable excuse, to comply with any of its relevant duties which are social services functions or duties under the *Children Act 1989*, he may make an order declaring that authority to be in default with respect to the duty in question, which may contain such directions for the purpose of ensuring that the duty is complied with.[298]

By November 2003, statutory intervention (under section 7D of the *Local Authority Social Services Act 1970*) had occurred in the following councils with social services responsibilities as a consequence of poorly performing children's services: Hackney in 1999; Lambeth in 2000; and Hackney in 2000. Twenty-seven councils (including the three listed above) had been placed on non-statutory "special measures" intervention, during which time the local authority has to provide the Government with a quarterly report of its progress against action plans. The Government states that "'special measures' are designed so that councils have every opportunity, with the support of the Department's Social Services Inspectorate [now the Commission for Social Care Inspection], to put their affairs in order".[299]

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[296] *Explanatory Notes*, para 185
[297] *Explanatory Notes*, para 186
[298] Under section 7D of the *Local Authority Social Services Act 1970* (which was inserted by the *National Health Service and Community Care Act 1990*) or section 84 of the *Children Act 1989*.
[299] HC Deb 11 November 2003 cc217W–218W

Clause 42 of the Bill proposes that the powers under section 497A (and associated sections 497AA and 497B) of the *Education Act 1996* are specifically[300] extended (without restricting the use of other powers of intervention)[301] to apply to children's services authorities' relevant functions, namely social services functions, functions conferred on the authority under sections 23C to 24D of the *Children Act 1989*, and co-operation and database functions (clauses 7 and 9 for England, and 21 and 24 for Wales) in the *Children Bill*.

Under the amended section 497A, it will be the case that the Secretary of State may give a direction if he is satisfied (either on a complaint or otherwise) that a local authority is failing in any respect to perform any relevant function to an "adequate standard (or at all)".

In regard to when the statutory powers of intervention might be invoked, Baroness Ashton said:

> In social services, the vast majority of intervention work has not involved the use of statutory powers. Solutions have included better monitored performance management plans and developing management capacity through the type of expert teams that noble Lords mentioned. The use of statutory powers will be considered where we have independent evidence of serious failure which, for example, could lead to services that fail to secure the safety and welfare of children. The powers of direction will be invoked only in proportion to the extent and nature of the failure identified. The most extreme forms of intervention, directing the outsourcing of services in particular, will only be used—if ever—when there is compelling evidence of serious failure and the inability of the authority concerned to tackle that failure within a reasonable timescale.[302]

Subsection 6 allows, where a direction is given under section 497A in relation to education functions, that it can also extend to the relevant functions of a children's services authority (and *vice versa*), so that it is not necessary to give two separate directions. Baroness Ashton explained that a joint direction may be issued "when expedient to ensure consistency and improvements across the integrated services".[303]

4. Inspection of local education authorities

Clause 43 will extend the coverage of inspections by OFSTED (in England) and Estyn (in Wales) to all education functions of a local authority (except for functions falling within

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[300] Baroness Ashton said "Let us be clear, the powers of intervention under Section 497A of the Education Act 1996 and in the Bill can be used only with regard to education functions and those functions set out in subsection (2) of Clause 41; not to any other functions of a local authority, or indeed to the functions of any other body" (HL Deb 27 May 2004 c1476)

[301] *Explanatory Notes*, para 193

[302] HL Deb 27 May 2004 cc1475–6

[303] HL Deb 27 May 2004 c1475

the Adult Learning Inspectorate's remit in England), and not just those relating to persons of compulsory school age or persons above or below that age who are registered as pupils at a school maintained by the authority as currently stated in section 38 of the *Education Act 1997*.

5. Educational achievement of children in care *(by Christine Gillie, Social Policy Section)*

a. Introduction

Clause 44 of the Bill creates a specific duty on local authorities to promote the educational achievements of children looked after by them.[304] The aim is that local authorities will have to give particular attention to the educational implications of any decisions made about a child in their care. The provision extends the general duty contained in section 22 of the *Children Act 1989* to safeguard and promote the welfare of the child. Clause 46 makes provision for an associated power to transmit data relating to individual children in monitoring the new duty contained in clause 44.

A new duty to promote the educational achievements of children was proposed in the Green Paper *Every Child Matters*[305] and by the Social Exclusion Unit (SEU) in its report *A better education for children in care*[306], which was published at the same time as the Green Paper. Both referred to the evidence relating to children in care achieving significantly less well than their peers, and noted that such under-performance was due partly to a lack of effective support from local authorities as 'corporate parents'.

The Social Exclusion Report, A better education for children in care

In March 2001, the Prime Minister asked the SEU to make recommendations on how best to raise the educational attainment of children in care. The Unit launched a written consultation exercise in July 2001, seeking views on the factors affecting children's education and good practice at raising attainment. In September 2003, the Unit published *A better education for children in care*. The report examined the barriers that prevent children in care achieving their educational potential, and highlighted specific areas of action to improve their life chances. The report found that the poor educational experiences and low attainment of many children in care (see below) contributes to their later social exclusion, which has high social and economic costs.

The report noted that at least some of this poor achievement is explained by other disadvantages. Children in care are more likely to be from groups that tend to do less

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[304] A "looked after" child is defined in section 22 of the *Children Act 1989* as a child in care (i.e. under a care order) or a child provided with accommodation by the local authority under its social service functions.

[305] *Every Child Matters*, p70, para 5.10

[306] Office of the Deputy Prime Minister (Social Exclusion Unit), *A better education for children in care*, September 2003 (hereafter *SEU Report*), see: http://www.socialexclusion.gov.uk/downloaddoc.asp?id=32

well in education. They are also much more likely to have statements of special educational need. However, the report stated that even taking account of these factors, children in care as a group do significantly worse than their peers.

The *Guidance on the Education of Children and Young People in Public Care*[307] emphasised that all those involved in corporate parenting should have a clear shared understanding of the local authority's commitment to improving educational experiences and outcomes for young people in public care, and how they aim to achieve it.

The guidance is supported by statutory guidance contained in Department of Health Circular LAC (2000)13, issued in May 2000.[308] This asked authorities to ensure that all children in their care have a personal education plan; that authorities establish and maintain a protocol for sharing relevant information about the care and education of children in care; and, that, except where a child is placed in an emergency, the arrangement of a suitable placement should include arrangement of suitable education, and that no placement should be made without the education element being satisfactorily sorted. The statutory guidance also stated that where a placement has had to be made in an emergency and education has not been secured, or the education provision has broken down, local authorities must secure an educational placement within 20 school days.

The SEU report identified five key reasons why children in care underachieve in education:

(i) too many young people's lives are characterised by **instability**;
(ii) young people in care spend too much **time out of school** or other place of learning;
(iii) children do not have sufficient **help with their education** if they get behind;
(iv) carers are not expected, or equipped, to provide sufficient **support and encouragement** at home for learning and development; and
(v) children in care need more help with their **emotional, mental or physical health and wellbeing.**[309]

The report made detailed recommendations for national and local action to address the problem. The recommendations for national Government included the introduction of a duty on each local authority to promote the educational achievement of children in care.[310] The Library's Standard Note, *Education: children in care* (SN/SP/3152), provides additional background information.[311]

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[307] See: http://www.dfes.gov.uk/incare/
[308] See: http://www.dh.gov.uk/assetRoot/04/01/26/69/04012669.pdf
[309] *SEU Report*, p17, para 2.8
[310] Office of the Deputy Prime Minister (Social Exclusion Unit), *A better education for children in care: Summary*, September 2003, p8, para 27, see: http://www.socialexclusion.gov.uk/downloaddoc.asp?id=42
[311] See: http://hcl1.hclibrary.parliament.uk/notes/sps/snsp-03152.pdf

The SEU report noted that there were some significant gaps in the data collected on the educational outcomes of children in care, and that the Government would:

> (i) ensure that guidance on the circumstances in which data can be shared between education and social services departments takes account of the needs of children in care;
> (ii) over the longer term, harmonise the timetable and requirements for Government data collection, so that only one set of data is collected on the education of children in care;
> (iii) use data from the Pupil Level Annual School Census (PLASC) and other relevant information to improve our understanding of outcomes for young people who have ever spent time in care, and review relevant policies in light of this analysis. Over time, this and other data collected by the Government, could form the basis of longitudinal research into children's educational needs;
> (iv) use PLASC data and other relevant information to improve understanding of outcomes for young people from ethnic minority backgrounds and children with disabilities, and review relevant policies accordingly;
> (v) monitor access to and take-up of pre-school provision for children in care; and,
> (vi) carry out further research into the extent and nature of children in care's involvement in out-of-school activities, and barriers to improving access.[312]

For a full list of the recommendations see Chapters 9 and 10 and Appendix C of the report.

Educational outcomes of children in care and PSA targets

A better education for children in care reported that the data for 2001/02 showed that:

- only 8 per cent of young people in year 11 who had spent at least one year in care gained five or more GCSEs graded A*–C, compared with 50 per cent of all young people. Almost 50 per cent had no qualifications at GCSE level. Of year 11 pupils who had been in care for one year or more, 42 per cent did not sit GCSEs or GNVQs, compared to just 4 per cent of all children;
- children in care also had poor results in National Curriculum Key Stage tests at 7, 11 and 14. Of those who sat Key Stage tests in 2001/02, children at Key Stage 1 (aged 7) achieved at just under 60 per cent of the level of other children. The performance of children at Key Stage 2 (aged 11) was just over half that of their peers, and at Key Stage 3 (aged 14) they did one-third as well as their peers; and,
- in 2001/02, just 46 per cent of care leavers were known to be engaged in education, training or employment at the age of 19, compared to 86 per cent of

[312] *SEU Report*, p64, para 9.27

> their peers. An estimated 1 per cent of young people from care went to university, compared to around 40 per cent of all school leavers.[313]

The report also commented on variations in educational attainment:

> There are significant variations in educational attainment within the care population. Those who are likely to do better include: children who have been in care for a long time; those who have stable care placements; and/or those whose main placement is in foster care. Girls also outperform boys by a greater margin than is seen in the rest of the population, and children do better when they are placed within their own local authority.(1) Data on the relative attainment of different ethnic groups in care is not currently available, although it will be available in future years(2).[314]
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> (1) Department of Health, *Educational Qualification and Care Histories of Care Leavers in England*, 2000.
> (2) The introduction of the Pupil Level Annual School Census (PLASC) in 2003 will enable authorities to identify whether ethnic minority children in care have different attainment patterns to their white peers, and to take steps to provide additional support to any groups identified as needing it.

Research on the education achievements at Key Stage 4 (14 to 16 year olds) of children in care has been carried out by the National Foundation for Educational Research (NFER).[315]

The current Public Service Agreement Targets relating to the educational achievements of children in care are set out in the DfES *Departmental Report 2004*:

> **SR2002 PSA Targets (transferred from the Department of Health)**
>
> Improve life chances for children including by:
>
> - improving the level of education, training and employment outcomes for care leavers aged 19, so that levels for this group are at least 75% of those achieved by all young people in the same area by 2004.
> - substantially narrowing the gap between the educational attainment and participation of children in care and that of their peers by 2006. Target achieved if:
>
> (a) outcomes for 11-year-olds in English and maths are at least 60% as good as those of their peers;
> (b) the proportion who become disengaged from education is reduced so that no more than 10% reach school leaving age without having sat a GCSE equivalent exam; and

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[313] *SEU Report*
[314] *SEU Report*, p10, para 1.2
[315] Department for Education and Skills, *Achievements at Key Stage 4 of Young People in Public Care*, Research Report 434, June 2003

(c) the proportion of those aged 16 who get qualifications equivalent to five GCSEs graded A*-C has risen on average by 4 percentage points each year since 2002; and in all authorities at least 15% of young people in care achieve this level of qualification.

- narrowing the gap between the proportions of children in care and their peers who are cautioned or convicted. Target met successfully if the proportion of children in care who were cautioned or convicted in the year to 30 September is reduced by a third i.e. from 10.8% to 7.2% by 2004.

Care Leavers

This target remains challenging but progress has been made. In 2002-03, the level of training, education and employment amongst care leavers was 58 per cent of the level amongst all young people of the same age.[316]

b. Lords consideration and the Bill as it currently stands

Clause 44 amends section 22 of the *Children Act 1989* (duties of a local authority in relation to each child whom it is looking after) to insert a new subsection (3A) which places a specific duty on the local authority to promote the child's educational achievement. The explanatory notes on the Bill state that the new duty will mean that local authorities will have to give particular attention to the educational implications of any decision about the welfare of any child they are looking after, and that might be, for instance, the need to organise a suitable school placement at the same time as arranging a new care placement.[317] The Regulatory Impact Assessment on the Bill states that clause 44 would not involve additional costs.

Reaction to the provision has been generally supportive. However, some commentators wish to see the new duty extended to schools.[318] At present, section 175 of the *Education Act 2002*, which came into effect on 1 June 2004, requires school governing bodies, local education authorities and further education institutions to make arrangements to safeguard and promote the welfare of children.

During the Bill's passage through the House of Lords several attempts were made to place a specific duty on individual schools to promote the educational achievements of children in care.[319] For example, on Third Reading the Earl of Listowel moved an amendment to place a duty on school governing bodies to ensure that teachers in a school

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[316] Department for Educations and Skills, *Departmental Report*, Cm 6202, April 2004, pp49–50, see: http://www.dfes.gov.uk/deptreport2004/uploads/DfES-Chapter%205.pdf

[317] *Explanatory Notes*, para 197

[318] For example, the Association of Chief Education Officers and ConfEd, Briefing for the House of Lords Second Reading Debate; ConfEd Briefing for Second Reading debate in the House of Commons. Also, LGA and National Children's Bureau: see *Community Care, 10-16 June 2004, p13*

[319] See HL Deb 27 May 2004 cc1468–1472; HL Deb 22 June 2004 cc1209–1218; HL Deb 15 July 2004 cc1484–93

are aware of the importance of identifying registered pupils who are in care.[320] Baroness Sharp also proposed an amendment under which governing bodies would be required to secure that teachers took account of the social needs of pupils; social need was defined as including children who are in public care.[321]

Baroness Ashton, for the Government, argued against the proposed amendments, and said that guidance on the duty to promote the educational attainment of children in care would reinforce the importance of giving school governors and teachers advice and training to support pupils in care. Ministers would consider what guidance to provide on the kind of questions that school governors could raise with their schools about the education of looked after children.[322]

Clause 46 amends section 83 of the *Children Act 1989* by inserting a new subsection (4A) to allow the transmission of data that identifies individual children. The Explantory notes on the Bill explain that the type of information transmitted will include name, a unique pupil reference number, and postcode, and that the information transmitted will be used to fulfil the Secretary of State's functions in relation to children and young people. In particular information on individual children will be used by the Secretary of State for statistical analysis in order to inform and review policy about children and young people. It will also be used to ensure that local practitioners have all the relevant and accurate information they need to carry out their functions.[323]

During the Committee stage, Earl Howe asked who would have access to information held on individual children under this provision, what confidentiality protocols would apply, and what sanctions there would be if the protocols were infringed. In response, Baroness Ashton deposited a letter in the Library clarifying the matter.[324] She noted that information will be held in compliance with Data Protection legislation, and that the National Statistics Code of Practice on Data Access and Confidentiality will apply. She also outlined the sanctions that would apply if the requirements were infringed.

6. Ascertaining children's wishes

The Department of Health's *Framework for the Assessment of Children in Need and their Families* of 2000 states that the wishes and feelings of a child in need should be ascertained during an assessment process:

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[320] HL Deb 15 July 2004 cc1484–93
[321] HL Deb 15 July 2004 cc1487–88
[322] HL Deb 15 July 2004 cc1490–93
[323] *Explanatory Notes*, para 199
[324] Department of Education and Skills, *Letter from Baroness Ashton of Upholland to Earl Howe*, 9 June 2004, HDEP, 2004/438

Child Centred

1.34 Fundamental to establishing whether a child is in need and how those needs should be best met is that the approach must be child centred. This means that the child is seen and kept in focus throughout the assessment and that account is always taken of the child's perspective. In complex situations where much is happening, attention can be diverted from the child to other issues which the family may be facing, such as a high level of conflict between adult family members, or depression being experienced by a parent or acute housing problems. This can result in the child becoming lost during assessment and the impact of the family and environmental circumstances on the child not being clearly identified and understood. The significance of seeing and observing the child throughout any assessment cannot be overstated.

1.35 The importance, therefore, of undertaking direct work with children during assessment is emphasised, including developing multiple, age, gender and culturally appropriate methods for ascertaining their wishes and feelings, and understanding the meaning of their experiences to them. Throughout the assessment process, the safety of the child should be ensured.[325]

During the Report stage, the Government tabled an amendment to insert a new clause into the Bill, entitled "Ascertaining children's wishes", in relation to section 17 of the *Children Act 1989*, which is entitled "Provision of services for children in need, their families and others" under which local authorities have a duty to safeguard and promote the welfare of children in need in their area by providing suitable services to those children.

Baroness Ashton explained that the clause would mean that a local authority, in considering what services to provide for a child in need, will be required to ascertain and to take account of the wishes of the child, so far as is reasonably practicable and consistent with the child's welfare. She added that "the effect would be to extend what local authorities in England and Wales already must do in relation to the children for whom they are providing accommodation into a more general obligation in relation to children in need to whom they are providing services".[326]

As the explanatory notes highlight, "Guidance issued under section 7 [of the] Local Authority Social Services Act 1970 in relation to section 17 already places considerable emphasis on listening to children and taking account of their wishes [see above]. Clause 45 gives statutory backing to that approach".[327]

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[325] Department of Health, *Framework for the Assessment of Children in Need and their Families*, 2000, paragraph numbers as shown, p10, see: http://www.dh.gov.uk/assetRoot/04/01/44/30/04014430.pdf

[326] HL Deb 22 June 2004 c1218

[327] *Explanatory Notes*, para 198

7. Children's services plan

Subsection 2 of clause 47 will repeal the requirement[328] for a local authority to produce a children's services plan; the explanatory notes state that "this is no longer thought to be necessary in view of the new duties being imposed on local authorities".[329]

8. Fees payable to adoption review panel members

Under section 12 of the *Adoption and Children Act 2002*, an independent review panel can be established through regulations; the panel reviews, in effect, appeals by someone who wishes to become an adopter in cases when an adoption agency has indicated that it is minded to turn down their application to adopt. The duties and powers of such a panel can be provided for under regulations, which may include provision as to the payment of expenses of members of a panel.

Clause 48 proposes that the phrase "expenses of" is changed to "fees to", so as to allow panel members to be paid. The Government explains that "This will help … to recruit panel members and is consistent with provision in the Adoption and Children Act 2002 Act, which will allow adoption agencies to pay fees to their adoption panel members".[330]

9. Reasonable chastisement *(by Sally Broadbridge, Home Affairs Section)*

a. Background and commentary on the original Bill

Section 1 of the *Children and Young Persons Act 1933* is concerned with "Cruelty to persons under sixteen", but subsection 7 states that "Nothing in this section shall be construed as affecting the right of any parent, or (subject to section 548 of the Education Act 1996) any other person, having the lawful control or charge of a child or young person to administer punishment to him".

Baroness Finlay of Llandaff noted during Committee stage that the 1933 Act is the only place where the "reasonable chastisement" defence is confirmed in statute. She noted that the common law "reasonable chastisement" defence dates back to 1860, "when Chief Justice Cockburn ruled in a case where a teacher had beaten a child to death that, 'By the law of England, a parent . . . may for the purpose of correcting what is evil in the child, inflict moderate and reasonable corporal punishment'".[331]

On 23 September 1998 the European Court of Human Rights (ECtHR) published its decision in the case of *A v United Kingdom*. The case concerned the severe beating of a

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[328] This requirement is by virtue of paragraph 1A of Schedule 2 of the *Children Act 1989* (which was inserted by the *Children Act 1989 (Amendment) (Children's Services Planning) Order 1996* (SI 1996/785)).

[329] *Explanatory Notes*, para 201

[330] *Explanatory Notes*, para 203

[331] HL Deb 20 May 2004 c891

boy, known as "A", by his stepfather, who had used a garden cane. The stepfather had previously been charged in an English court with assault occasioning actual bodily harm but successfully claimed that his actions amounted to "reasonable chastisement" and was acquitted by the jury.

Both the UK Government and the European Commission on Human Rights, which had referred the case to the ECtHR, accepted that, in the case involving A, there had been a violation of Article 3 of the European Convention on Human Rights (ECHR), which states: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".[332]

In its ruling the ECtHR agreed, holding unanimously that a beating with a garden cane applied with considerable force on more than one occasion reached a level of severity prohibited by Article 3. The ECtHR ruled that, because of the way in which the defence of "reasonable chastisement" was applied, UK law had failed to protect A from "inhuman or degrading treatment" in the form of severe beatings, in contravention of the ECHR.[333]

Following the ruling of the ECtHR, the Government said it was to issue a consultation paper in order to seek ways to clarify the law, which would "reflect the view that violence against children is unacceptable and promote better protection for children without getting in the way of normal family life".[334]

A consultation paper *Protecting Children, Supporting Parents: A Consultation Document on the Physical Punishment of Children* was duly published by the Department of Health in January 2000. The Government's stated view was that "it would be quite unacceptable to outlaw all physical punishment of a child by a parent". Views were sought on the proposal:

> That it should be clearly set out in law that in considering whether or not the physical punishment of a child constitutes reasonable chastisement a Court should always have regard to the following factors:
>
> - The nature and context of the treatment;
> - Its duration;
> - Its physical and mental effects; and, in some instances,
> - The sex, age and state of health of the victim.

The consultation paper set out the following areas for consultation:

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[332] Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11*, p3, see: http://www.echr.coe.int/Convention/webConvenENG.pdf

[333] Department of Health, *Protecting Children, Supporting Parents*, January 2000 (hereafter *DH Smacking Consultation*), p1, paras 1.3 and 1.4, see: http://www.dh.gov.uk/assetRoot/04/05/48/48/04054848.pdf

[334] Department of Health, *Health Minister Welcomes "Commonsense Decision"*, press release 98/397, see: http://www.dh.gov.uk/PublicationsAndStatistics/PressReleases/PressReleasesNotices/fs/en?CONTENT_ID=4024920&chk=7U7E9n

> 1. What factors should the law require a Court to consider when determining "reasonable chastisement"?
>
> 2. Are there any forms of physical punishment which should never be capable of being defended as "reasonable, e.g. physical punishment which causes, or is likely to cause injuries to the head or physical punishment using implements?
>
> 3. Should we restrict the defence of reasonable chastisement so that it may be used only by those charged with common assault?
>
> 4. Who should be able to claim the defence of reasonable chastisement?[335]

Before the Government had considered the responses to the consultation, however, on 25 April 2001 the Court of Appeal (Criminal Division) considered what directions should be given to a jury in a relevant case, that of *Regina v H* ([2001] 2 FLR 431). It had been submitted that, pending legislation, the judge should direct the jury in accordance with the factors identified in the decision of the European Court of Human Rights in *A v United Kingdom* as being relevant to whether chastisement was reasonable. Further, the judge should give directions to the jury in detailed terms that, when they are considering the reasonableness or otherwise of the chastisement, they must consider the factors set out in the consultation paper, namely the nature and context of the defendant's behaviour, its duration, its physical and mental consequences in relation to the child, the age and personal characteristics of the child and the reasons given by the defendant for administering punishment as stated in.

The court concluded:

> The directions which it is proposed the judge should give to the jury … seem to us to be an appropriate and accurate reflection of the current state of the common law in the light of the Strasbourg jurisprudence to which the English courts, by virtue of the Human Rights Act, must now have regard.

In November 2001, the then Health Minister, Jacqui Smith, announced the Government's decision not to introduce a ban on smacking in England and Wales.[336] The Department of Health said that seventy per cent of the members of the public who responded to the consultation felt that the law did not need to change.

The Government concluded that the "recent developments in the law have answered some of the key concerns that led to the consultation exercise in the first place. We do not believe that any further change to the law at this time would command widespread public

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[335] *DH Smacking Consultation*, p18

[336] Department of Health, *Protecting children and supporting parents*, press release 2001/524, 8 November 2001, see: http://www.dh.gov.uk/PublicationsAndStatistics/PressReleases/PressReleasesNotices/fs/en?CONTENT_ID=4011482&chk=Rrs77Q

support or that it would be capable of consistent enforcement. However, we will keep the reasonable chastisement defence under review in the future".[337]

In addition to the ECHR, there are also compliance issues in regard to the UNCRC. In October 2002, the CteRC commented unfavourably on the situation in regard to corporal punishment in the UK:

> In light of its previous recommendation … the Committee deeply regrets that the State party persists in retaining the defence of "reasonable chastisement" and has taken no significant action towards prohibiting all corporal punishment of children in the family.
>
> The Committee is of the opinion that the Government's proposals to limit rather than to remove the "reasonable chastisement" defence do not comply with the principles and provisions of the Convention and the aforementioned recommendations, particularly since they constitute a serious violation of the dignity of the child (see similar observations of the Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.79, para. 36). Moreover, they suggest that some forms of corporal punishment are acceptable, thereby undermining educational measures to promote positive and non-violent discipline.
>
> The Committee recommends that the State party:
> (a) With urgency adopt legislation throughout the State party to remove the "reasonable chastisement" defence and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation;
> (b) Promote positive, participatory and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, involving children and parents and all those who work with and for them, and carry out public education programmes on the negative consequences of corporal punishment.[338]

In June 2003, the JCHR published its report on aspects of the implementation of the UNCRC in the UK. They concurred with the CteRC that the retention in UK law of the defence of "reasonable chastisement" was incompatible with the provisions of Article 19 of the Convention.

> 109. There is little ambiguity in Article 19 of the CRC, which requires States Parties to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse ... while in the care of parent(s), legal guardian(s) or any other person who has the care of the child". On the face of it, the retention of the defence of reasonable chastisement is a

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[337] Department of Health, *Analysis of Responses to the "Protecting Children, Supporting Parents" Consultation Document*, p20, paras 72–76, see: http://www.publications.doh.gov.uk/pcspresponse/childproconsresp.pdf

[338] *CteRC UK Observations*, pp8–9, paras 35 to 38

> breach of Article 19 (although there is room for debate over the word "appropriate"). Its wholesale repeal could have the virtue of greater clarity than the current law. It would then be necessary to rely on current prosecution policy—the evidential test and the public interest test—to ensure that mild smacks of children, like minor assaults on adults, would not be prosecuted. Careful prosecution guidelines would have to ensure that there is a reasonable degree of legal certainty for parents at the same time as providing greater protection for children.
>
> 110. We have examined the case for retaining the defence, but find the lack of respect it embodies for children's entitlement to be free from physical assault to be unacceptable. The case for change is reinforced by recommendations of the UN Committee on Economic, Social and Cultural Rights and the European Committee on Social Rights, and by the observations of the Council of Europe's Committee of Ministers on the steps required for the proper execution of the judgement in the case of A v UK. In determining how best to achieve full compliance with its international obligations, the Government should review the experience of other member states of the Council of Europe.
>
> 111. We conclude that the time has come for the Government to act upon the recommendations of the UN Committee on the Rights of the Child concerning the corporal punishment of children and the incompatibility of the defence of reasonable chastisement with its obligations under the Convention. We do not accept that the decision of the Government not to repeal or replace the defence of reasonable chastisement is compatible with its obligations under the Convention on the Rights of the Child.[339]

The Health Committee, in considering the case of Victoria Climbié, also pressed the Government to abolish the defence of reasonable chastisement: "We urge the Government to use the opportunity of its forthcoming Green Paper on children at risk to remove the increasingly anomalous reasonable chastisement defence from parents and carers in order fully to protect children from injury and death".[340]

On 19 November 2003, David Hinchliffe presented a Bill to amend the *Children and Young Persons Act 1933* to remove any existing defence which justifies the corporal punishment of children and to give children the same protection as adults under the law on assault.[341]

In addition to Parliamentary pressure, "Children Are Unbeatable" is an alliance of more than 350 organisations and projects, including Barnardo's and the NSPCC, that was

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[339] Joint Committee on Human Rights, *The UN Convention on the Rights of the Child*, 24 June 2003, HC 81/HL 117 2002–03, pp49–50, paragraph numbers as shown, see: http://pubs1.tso.parliament.uk/pa/jt200203/jtselect/jtrights/117/117.pdf

[340] *Health Cttee Report*, p17, para 55

[341] *Corporal Punishment of Children (Abolition) Bill*, Bill 185 2002–03; HC Deb 19 November 2003 c808

formed in 1998 and "campaigns for children to have the same legal protection against being hit as adults and promotes positive, non-violent discipline".[342]

The JCHR noted that the *Children Bill* presented to the House of Lords for Second Reading did not include any provision abolishing the defence of reasonable chastisement, but added that "the Government has indicated that it is prepared to give careful consideration to any amendment brought forward on this issue and to consider allowing a free vote at the relevant stage of the Bill … [and] has said that it will not support any amendment which constitutes a ban on smacking children".[343]

The JCHR said that the ruling by the ECtHR in the case of *A v UK* "gives rise to an obligation on the UK to adopt general measures to prevent a repetition of the violation found in that case … We are concerned that the failure to remove the reasonable chastisement defence is in breach of the UK's obligation under Article 46 ECHR to abide by final judgments of the European Court of Human Rights".[344]

b. Lords consideration

In Committee, Baroness Finlay of Llandaff moved an amendment to insert a new clause which would revise the reasonable chastisement defence.[345] She explained the amendment:

> Subsection (1) of the proposed new clause would mean that battery of a child could no longer be justified as a lawful form of punishment. Subsection (2) would make it clear that parents can use reasonable force to protect children and property and to prevent commission of a crime. Loving, caring parents need to use physical actions at all times, especially with young children, to protect them—to grab and lift them, to restrain them and so on. That is part of day-to-day parenting. This reform would not interfere with that at all.
>
> Subsection (4) of the proposed new clause would amend Section (1) of the Children and Young Persons Act 1933, which is the only place where the "reasonable chastisement" defence is confirmed in statute. Again, parents' rights to punish children and use physical actions to protect them and other people and property, or to prevent a crime being committed, are preserved. Put most simply, the proposed new clause would place children in the same position as adults under the law on assault and meet the UK's human rights obligations.
>
> Peter Carter QC, the leading authority on offences of violence and chair of the Bar human rights committee, has advised on the wording of the proposed new clause. He has provided reassurance that it would not result in increased

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[342] See: http://www.childrenareunbeatable.org.uk/
[343] *JCHR Fifth Progress Report*, p11, para 1.32
[344] *JCHR Fifth Progress Report*, p12, para 1.33
[345] HL Deb 20 May 2004 cc890–914

> prosecutions of parents for minor incidents and would not create any new offence. I am, of course, happy to share his legal opinion with any noble Lords who wish to see it.[346]

There was considerable debate on the amendment; Earl Howe said he could not "live with the amendment. We need to be clear what the amendment does. It turns all smacking of children—smacking in all circumstances other than when administered in what one might term an emergency—into a criminal offence". He noted the argument put by Baroness Finlay that in most cases in which parents are caught smacking children, they will not be subject to criminal proceedings, and said "I have great difficulty with the idea that we should classify something as a criminal offence and then say in the same breath that in the vast majority of cases, the law will not be invoked. That brings the law into disrepute".

Speaking for the Government, Baroness Ashton explained why she could neither support the amendment nor agree that it was suitable for a free vote:

> We must look at what the amendment would do. Having taken legal advice as far as I possibly can and at the high possible level, I can tell Members of the Committee that the amendment would ban smacking. Noble Lords may be perfectly comfortable with that, but it would be the effect of the amendment. We must therefore review the amendment in that context.
>
> I accept the good judgment and words of the various legal professionals who have been quoted. I shall paraphrase the words of the Director of Public Prosecutions—the transcript is not available—who attended the Joint Committee on Human Rights yesterday.[347] He said that he had seen the amendment and believed that it clearly outlawed battery. He was very conscious that that would mean that even minor assaults would be criminalised under the amendment. Although in many cases minor offences may not come to court, his office could not issue guidance that stated that it would not prosecute in certain circumstances. He could not devise a policy where minor slaps were never prosecuted against. It is important that we understand what the Director of Public Prosecutions said.
>
> […]
>
> If the amendment would create uncertainty in the criminal justice system, the police and social services, and make parents' position in relation to their child ambiguous, I submit that it would be difficult for the Government to allow a free vote. If we did so, we would be acting irresponsibly. I say that not because I do not understand the underlying propositions, but because of the effect of the amendment.

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[346] HL Deb 20 May 2004 c891

[347] Joint Committee on Human Rights, *Prosecution Policy*, 4 August 2004, HC 619-i /HL 151 2003–04, see: http://www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/151/4051901.htm

The amendment was withdrawn, but was brought back and put to a vote at Report, when it was rejected.[348]

Lord Lester tabled an alternative approach, namely to outlaw abusive punishment without also outlawing reasonable parental discipline, and it was carried on a division by 226 votes to 91. Lord Lester recognised a need to strengthen legal protection for children whose parents were violent towards them, but did not believe that parents should be criminalised for administering a light disciplinary smack. Nor did he believe that equality required such an extension of the criminal law.

Among the points made during a three and a half hour debate were:

- that a total ban would divert already stretched child protection resources away from the children who most needed them;
- that it could make parents unwilling to welcome social workers into the home;
- that the equality argument overlooked the special nature of the parent-child relationship;
- that the claim that trivial cases would not be prosecuted overlooked the fact that each allegation would necessitate an investigation;
- that Parliament should not pass a law which it did not expect to be enforced;
- that white skins show bruising more easily than black ones; and,
- that in countries where hitting children had been made unlawful the number of obligatory interventions into family life had fallen.

c. The Bill as it currently stands

The effect of clause 49 is to remove the defence of reasonable chastisement in any proceedings for an offence of assault occasioning actual bodily harm, unlawfully inflicting grievous bodily harm, causing grievous bodily harm with intent, or cruelty to a child, and also any civil proceedings where the harm caused amounted to actual bodily harm, which has the same meaning as it has for the purposes of section 47 of the *Offences Against the Person Act 1861*.[349]

Further information on this topic, including the policies and views on smacking throughout the UK, can be found in the Library's Standard Note, *The smacking issue* (SN/SP/1712).[350]

10. Financial assistance

Clause 50 amends the *Education Act 2002* to allow the Secretary of State (for England) or the NAfW (for Wales) to also "give, or make arrangements for the giving of, financial

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[348] HL Deb 5 July 2004 cc518–572
[349] *Explanatory Notes*, para 204
[350] See: http://hcl1.hclibrary.parliament.uk/notes/has/snha-01712.pdf

assistance to any person for or in connection with" the promotion of the welfare of children and their parents, and the provision of support for parenting (including support for prospective parents), where children, for these purposes, are defined as being under 20 years of age. The Government explains that "The effect is to provide a statutory basis for giving financial assistance to activity across the new wider responsibilities of the Department for Education and Skills … [including] responsibilities for children's services and parenting".[351]

11. Child safety orders

A child safety order, which is legislated for under the *Crime and Disorder Act 1998*, places a child under 10 years of age under the supervision of a responsible officer from either a social services department or youth offending team, and requires the child to comply with specified requirements.

Clause 51 extends the existing circumstances in section 8 of the 1998 Act in which courts can make parenting orders when a child has failed to comply with a requirement of a child safety order; a parenting order can be at the same time as the child safety order, or at a later date. Clause 51 also extends the maximum duration of a child safety order from three months to twelve months, which is currently the limit for cases where the court is satisfied the circumstances are exceptional. Subsection 4 of clause 51 removes the power of the court, when a child safety order is made, to make a care order at a lower threshold than is normally required under section 31 of the *Children Act 1989*.

[351] *Explanatory Notes*, para 209

VI The costs associated with the Bill

The Government estimates that the cost of the Children's Commissioner will be £2.5 million per annum, but notes that, following the addition of the new clause 4 during Lords stages, the Government would do "further work on the cost implications of the additional duty and will decide on an appropriate addition to the Commissioner's annual budget after the implication of the Spending Review have been more fully worked out".[352]

The original figure of £2.5 million attracted criticism during the Second Reading debate in the Lords, as peers considered that it was not sufficient. Lord Prys-Davies noted that "That is the budget for providing a service which potentially will serve 13 million children and young people", and argued that it was "a relatively small sum. It is substantially less than the current total budget of £4.5 million for the Welsh, Northern Ireland and Scottish commissioners".[353]

The Government expects that the flexibility offered by clause 7 to local authorities in achieving co-operation with relevant partners will allow them "to build on existing arrangements and avoid additional costs", while clause 8 "does not necessarily imply additional expenditure". However, the establishment of information databases under clause 9 will have "significant expenditure implications, and potentially implications for manpower as well" although these will be only be clearly known when regulations, which will provide further details of the databases, are brought forward.[354] This applies equally to the parallel Welsh clauses, clauses 21 and 23 to 24.

The creation of LSCBs, under clauses 11 to 13, will be funded by the £100 million "Safeguarding Grant", although the cost of creating each LSCB will vary, depending on how existing ACPCs work. The same is true of the provision for Wales in clauses 25 to 28. However, the creation of the new posts of Director and lead Member for Children's Services are not expected to create significant cost.[355]

The Government states that any expenditure and manpower implications associated with clauses 16 to 20 will be identified alongside the development of the inspection framework and taken into account in planning for implementation.[356]

The devolution of CAFCASS's Welsh function, under clauses 29 to 36, is expected to be "neutral in public expenditure terms".[357]

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[352] *Explanatory Notes*, para 218
[353] HL Deb 30 March 2004 c1267
[354] *Explanatory Notes*, para 219–220
[355] *Explanatory Notes*, para 221–222
[356] *Explanatory Notes*, para 223
[357] *Explanatory Notes*, para 225

In regard to the amendments to the private fostering notification scheme in clause 37, the Government said that it is "not thought that it will impose significant additional financial or manpower burdens on authorities", although the potential cost and manpower implications of introducing a registration scheme "are factors that will be taken into account in deciding whether to implement the regulation making powers in clauses 38 and 39".[358]

The impact of the financial arrangements for registration of childcare providers is expected to be minimal, in regard to clause 41 and schedule 4.[359]

The ability to pay Independent Review Panel members fees under clause 48 is forecast to involve "some marginal additional cost", while clause 50, which extends an existing grant-making power, broadens the scope for giving financial assistance from public funds.[360]

[358] *Explanatory Notes*, para 226
[359] *Explanatory Notes*, para 227
[360] *Explanatory Notes*, paras 228–229

VII Compliance with the European Convention on Human Rights

In regard to the version of the *Children Bill* before the Commons for Second Reading, the Secretary of State for Education and Skills made the following statement: "In my view the provisions of the Children Bill are compatible with the Convention rights".[361]

The Government notes that the Bill does raise issues in relation to article 8 of the ECHR in regard to its provisions on information databases (clauses 9 and 24), private fostering (clauses 37 to 40), and information about individual children (clause 46). Schedule 1 raises issues in relation to article 6 of the ECHR.

Article 8 of the ECHR states:

> **Article 8 – Right to respect for private and family life**
>
> 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.[362]

In regard to the information database, the DfES "considers that while the creation of databases containing personal details about all children may constitute an interference with Article 8 rights, the interference is proportionate and justified under Article 8.2".[363]

Interference with Article 8 rights also arises in respect of clause 37, which affects the rights of parents to arrange for others to care for their children and of individuals to act as private foster carers. However, the DfES "considers that it is justified in terms of Article 8.2 as being for the protection of the health and morals of the children whom it is proposed to foster privately and who are privately fostered", and that this justification also applies to the proposed registration scheme.[364]

Although clause 46 will be an interference with Article 8 rights, the DfES states that, in its view, "such an interference is justified in terms of Article 8.2 as fulfilling a pressing social need and will be in pursuance of a legitimate aim".[365]

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[361] *Explanatory Notes*, para 238
[362] Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11* (hereafter *ECHR*), p6, see: http://www.echr.coe.int/Convention/webConvenENG.pdf
[363] *Explanatory Notes*, para 233
[364] *Explanatory Notes*, para 234
[365] *Explanatory Notes*, para 235

Article 6 of the ECHR is as follows:

> **Article 6 – Right to a fair trial**
>
> 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
>
> 2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3 Everyone charged with a criminal offence has the following minimum rights:
>
> a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> b to have adequate time and facilities for the preparation of his defence;
>
> c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> e to have the free assistance of an interpreter if he cannot understand or speak the language used in court.[366]

The granting of absolute privilege to the Children's Commissioner in respect of any statement made in a report published under Part I causes interference with Article 6 rights, but is "justified as being in pursuit of a legitimate aim and proportionate".[367]

In addition, the JCHR drew attention to Part 2 of the Bill as it stood at Second Reading in the Lords; the Bill has since been amended so all the clauses referred to are now one number higher:

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[366] *ECHR*, pp5–6
[367] *Explanatory Notes*, para 237

Children's Services

1.19 Part 2 of the Bill makes provision for the better integration, planning, commissioning and delivery of children's services. Although this is not mentioned in the relevant part of the Explanatory Notes, this part of the Bill engages the important positive obligations owed to children under Articles 2, 3 and 8 ECHR, to take positive steps to protect their lives, to protect them from inhuman and degrading treatment, and to protect their physical integrity.

1.20 The duties in Part 2 are couched in similar language to that used in Part 1. We have written to the Minister seeking an explanation of the wording of the duties in clauses 6 and 7, and we draw this matter to the attention of each House.

1.21 Finally in relation to Part 2, the list of "partners" in clause 6(3) and the lists in clause 7(1) and 9(3) omits any organisations working with the children of refugees and asylum seekers. It appears from the Minister's speech at Second Reading that this is a deliberate omission, and that the Government is relying on its reservation to the CRC. However, the omission of this particular group of children from the institutional arrangements designed to fulfil the State's positive obligations to children under Articles 2, 3 and 8 raises the question of whether this gives rise to unjustifiable discrimination in the enjoyment of Convention rights. We have written to the Minister seeking the government's justification for this omission from the Bill, and we draw this matter to the attention of each House.[368]

[368] *JCHR Fifth Progress Report*, p8, paragraph numbers as shown

VIII References to online documents

The following are internet links, correct at the time of publication, to key documents relating to the *Children Bill*:

- Children Bill:
  - as presented to the Lords for Second Reading and Explantory notes (Bill 35) http://pubs1.tso.parliament.uk/pa/ld200304/ldbills/035/2004035.htm
  - as amended during Committee stage in the House of Lords (Bill 82) http://pubs1.tso.parliament.uk/pa/ld200304/ldbills/082/2004082.htm
  - as amended during Report stage in the House of Lords (Bill 97) http://pubs1.tso.parliament.uk/pa/ld200304/ldbills/097/2004097.htm
    as presented to the Commons for Second Reading and Explantory notes (Bill 144) http://pubs1.tso.parliament.uk/pa/cm200304/cmbills/144/2004144.htm

- Children Bill (Bill 35) Regulatory Impact Assessment [Bill 144 has a new RIA] http://www.dfes.gov.uk/everychildmatters/pdfs/75E80A00final.pdf

- Department for Education and Skills
  - *Every Child Matters* (Green Paper) http://www.dfes.gov.uk/everychildmatters/pdfs/EveryChildMatters.pdf
  - Responses http://www.dfes.gov.uk/everychildmatters/pdfs/EveryChildMattersWhatYouSaid.pdf
  - *Every Child Matters: Next Steps* http://www.dfes.gov.uk/everychildmatters/pdfs/EveryChildMattersNextSteps.pdf
  - Policy statements on proposed guidance and regulations related to the Children Bill http://www.dfes.gov.uk/everychildmatters/downloads.cfm

- Victoria Climbié Inquiry
  - Homepage http://www.victoria-climbie-inquiry.org.uk
  - Report http://www.victoria-climbie-inquiry.org.uk/finreport/report.pdf

- Existing Children's Commissioner in the UK
  - The Children's Commissioner for Wales http://www.childcom.org.uk
  - The Northern Ireland Commissioner for Children and Young People www.niccy.org
  - The Commissioner for Children and Young People in Scotland http://www.cypcommissioner.org

Current internet links can also be found in the body and footnotes of the Paper. The House of Commons Library is not responsible for the content of external internet sites.

Appendix: Abbreviations used

ACPC	Area Child Protection Committee
BAAF	British Association for Adoption and Fostering
CAFCASS	Children and Family Court Advisory and Support Service
CRAE	Children's Rights Alliance for England
CteRC	United Nations' Committee on the Rights of the Child
DfES	Department for Education and Skills
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
GP	General Practitioner (i.e. a medical doctor)
JAR	Joint Area Review
JCHR	Joint Committee on Human Rights
LEA	Local Education Authority
LGA	Local Government Association
LSCB	Local Safeguarding Children Board
NAfW	National Assembly for Wales
NASS	National Asylum Support Service
NHS	National Health Service
NSPCC	National Association for the Prevention of Cruelty to Children
PCT	Primary Care Trust
UNCRC	United Nations' Convention on the Rights of the Child
UNICEF	United Nations' Children's Fund
YOT	Youth Offending Team