

# Children Bill [HL]

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Education and Skills, are published separately as Bill 144 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Clarke has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Children Bill [HL] are compatible with the Convention rights.

# Children Bill [HL]

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**[NOTE: The words marked in bold type were inserted by the Lords to avoid questions of privilege.]**

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**B I L L**

TO

Make provision for the establishment of a Children’s Commissioner; to make provision about services provided to and for children and young people by local authorities and other persons; to make provision in relation to Wales about advisory and support services relating to family proceedings; to make provision about private fostering, child minding and day care, adoption review panels, the defence of reasonable punishment, the making of grants as respects children and families and about child safety orders.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

CHILDREN’S COMMISSIONER

**1 Establishment**

- (1) There is to be an office of Children’s Commissioner.
- (2) Schedule 1 has effect with respect to the Children’s Commissioner. 5

**2 General function**

- (1) The Children’s Commissioner has the function of promoting and safeguarding the rights and interests of children in England.
- (2) The Children’s Commissioner may in particular under this section—
  - (a) encourage persons exercising functions or engaged in activities affecting children to take account of their rights, views and interests; 10
  - (b) advise the Secretary of State on the rights, views and interests of children;
  - (c) review and report on the effectiveness of—
    - (i) advice and advocacy services; 15
    - (ii) complaints procedures; and

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- (iii) inspection and whistle-blowing arrangements;  
so far as relating to children;
- (d) review and report on any other matter relating to the rights, views and interests of children.
- (3) The Children’s Commissioner must take reasonable steps to involve children in the discharge of his function under this section, and in particular to – 5
- (a) ensure that children are made aware of his function and how they may communicate with him;
- (b) consult children, and organisations working with children, on the matters he proposes to review and report on under subsection (2)(c) or (d); 10
- (c) ensure that the content of any material issued by the Commissioner or his staff, whether printed or in electronic or other form, which is intended to be used by children, takes account, so far as practicable, of the means of communication, level of understanding and usual language of the intended recipients. 15
- (4) The Children’s Commissioner must for the purposes of subsection (3) have particular regard to groups of children who do not have other adequate means by which they can make their views known.
- (5) The Children’s Commissioner or a person authorised by him may for the purposes of his function under this section at any reasonable time – 20
- (a) enter any premises, other than a private dwelling, for the purposes of interviewing any child accommodated or cared for there; and
- (b) if the child consents, interview the child in private.
- (6) Any person exercising functions under any enactment must supply the Children’s Commissioner with such information in that person’s possession relating to those functions as the Children’s Commissioner may reasonably request for the purposes of his function under this section (provided that the information is information which that person may, apart from this subsection, lawfully disclose to him). 25 30
- (7) The Children’s Commissioner may provide assistance to a child to bring legal proceedings where the child is unable to bring legal proceedings; and it appears to the Commissioner reasonable to do so and there is no other person or body likely to provide such assistance or take such action (or both).
- (8) In considering for the purpose of his function under this section what constitutes the rights and interests of children (generally or so far as relating to a particular matter) the Children’s Commissioner must have regard to the United Nations Convention on the Rights of the Child. 35
- (9) In subsection (8) the reference to the United Nations Convention on the Rights of the Child is to the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989, subject to any reservations, objections or interpretative declarations by the United Kingdom for the time being in force. 40
- (10) For the purposes of this section “children” includes – 45
- (a) young people in custody under the age of 22;
- (b) young people in respect of whom a children’s services authority has duties under sections 23C to 24D of the Children Act 1989 (c. 41); and
- (c) young people with learning disabilities under the age of 21.

### **3 Annual report**

- (1) As soon as possible after the end of each financial year the Children’s Commissioner must make a report on –
  - (a) the way in which he has discharged his function under section 2 during the year; 5
  - (b) what he has found in the course of exercising that function during the year; and
  - (c) the matters he intends to consider or research during the next financial year.
- (2) The Children’s Commissioner must in particular under subsection (1)(a) 10 include an account of the steps taken by him under section 2(3).
- (3) Where the Children’s Commissioner makes a report under this section –
  - (a) he must send a copy to the Secretary of State; and
  - (b) the Secretary of State must lay a copy before each House of Parliament.
- (4) The Children’s Commissioner must publish a report made under this section 15 as soon as possible after the Secretary of State has discharged his function under subsection (3)(b).
- (5) In this section, “financial year” has the same meaning as in paragraph 8 of Schedule 1.

### **4 Inquiries initiated by Commissioner**

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- (1) Where the Children’s Commissioner considers that the case of an individual child raises issues of public policy of relevance to other children, he may hold an inquiry into that case for the purpose of investigating and making recommendations about those issues.
- (2) The Children’s Commissioner may only conduct an inquiry under this section 25 if he is satisfied that the inquiry would not duplicate work that is the function of another person (having consulted such persons as he considers appropriate).
- (3) Before holding an inquiry under this section the Children’s Commissioner 30 must consult the Secretary of State.
- (4) The Children’s Commissioner may, if he thinks fit, hold an inquiry under this section, or any part of it, in private.
- (5) As soon as possible after completing an inquiry under this section the Children’s Commissioner must –
  - (a) publish a report containing his recommendations; and 35
  - (b) send a copy to the Secretary of State.
- (6) The report need not identify any individual child if the Commissioner considers that it would be undesirable for the identity of the child to be made public.
- (7) Subsections (2) and (3) of section 250 of the Local Government Act 1972 (c. 70) 40 apply for the purposes of an inquiry held under this section in England and Wales as they apply for the purposes of a local inquiry under that section with the substitution for references to the person appointed to hold the inquiry of references to the Children’s Commissioner.

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- (8) Subsections (3) to (5) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) apply for the purposes of an inquiry held under this section in Scotland as they apply for the purposes of a local inquiry under that section with the substitution for references to the person appointed to hold the inquiry of references to the Children’s Commissioner. 5
- (9) Paragraphs 2 to 5 of Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)) apply for the purposes of an inquiry held under this section in Northern Ireland as they apply for the purposes of a local inquiry under that Order with the substitution for references to the person appointed to hold the inquiry of references to the Children’s Commissioner. 10
- 5 Other inquiries held by Commissioner**
- (1) Where the Secretary of State considers that the case of an individual child raises issues of relevance to other children, he may direct the Children’s Commissioner to hold an inquiry into that case. 15
- (2) The Children’s Commissioner may, if he thinks fit, hold an inquiry under this section, or any part of it, in private.
- (3) The Children’s Commissioner must, as soon as possible after the completion of an inquiry under this section, make a report in relation to the inquiry and send a copy to the Secretary of State. 20
- (4) The Secretary of State must, subject to subsection (5), publish each report received by him under this section.
- (5) Where a report made under this section identifies an individual child and the Secretary of State considers that it would be undesirable for the identity of the child to be made public – 25
- (a) the Secretary of State may make such amendments to the report as are necessary to protect the identity of the child and publish the amended report only; or
- (b) if he considers that it is not possible to publish the report without identifying the child, he need not publish the report. 30
- (6) The Secretary of State must lay a copy of each report published by him under this section before each House of Parliament.
- (7) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) apply for the purposes of an inquiry held under this section in England and Wales as they apply for the purposes of a local inquiry under that section. 35
- (8) Subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973 apply for the purposes of an inquiry held under this section in Scotland as they apply for the purposes of a local inquiry under that section with the substitution (notwithstanding the provisions of section 53 of the Scotland Act 1998 (c. 46) (general transfer of functions to the Scottish Ministers)) for references to the Minister of references to the Secretary of State. 40
- (9) Paragraphs 2 to 8 of Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)) apply for the purposes of an inquiry held under this section in Northern Ireland as they apply for the purposes of a local inquiry under that Order with the substitution for references to the Ministry of references to the Secretary of State. 45

## 6 Relationship with other Commissioners

- (1) The Children’s Commissioner may not under section 4 hold an inquiry where the issues referred to in subsection (1) of that section relate to –
  - (a) any matter falling within the remit of the Children’s Commissioner for Wales under section 72B, 73 or 74 of the Care Standards Act 2000 (c. 14) in relation to children to whom Part 5 of that Act applies; 5
  - (b) any matter relating to children in Scotland which is not a reserved matter (within the meaning of the Scotland Act 1998 (c. 46)); or
  - (c) any matter relating to children in Northern Ireland which is a transferred or reserved matter (within the meaning of the Northern Ireland Act 1998 (c. 47)). 10
- (2) The Secretary of State may not under section 5 give a direction to the Children’s Commissioner to hold an inquiry where the issues referred to in subsection (1) of that section relate to a matter referred to subsection (1)(a) to (c) above.

## PART 2 15

### CHILDREN’S SERVICES IN ENGLAND

#### *General*

## 7 Co-operation to improve well-being

- (1) Each children’s services authority in England must make arrangements to promote co-operation between –
  - (a) the authority; 20
  - (b) each of the authority’s relevant partners; and
  - (c) such other persons or bodies as the authority consider appropriate, being persons or bodies of any nature who exercise functions or are engaged in activities in relation to children in the authority’s area. 25
- (2) The arrangements are to be made with a view to improving the well-being of children in the authority’s area so far as relating to –
  - (a) physical and mental health;
  - (b) protection from harm and neglect;
  - (c) education, training and recreation; 30
  - (d) the contribution made by them to society;
  - (e) emotional, social and economic well-being.
- (3) In making arrangements under this section a children’s services authority in England must have regard to the importance of parents and other persons caring for children in improving the well-being of children. 35
- (4) For the purposes of this section each of the following is a relevant partner of a children’s services authority in England –
  - (a) where the authority is a county council for an area for which there is also a district council, the district council;
  - (b) the police authority and the chief officer of police for a police area any part of which falls within the area of the children’s services authority; 40
  - (c) a local probation board for an area any part of which falls within the area of the authority;

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- (d) a youth offending team for an area any part of which falls within the area of the authority;
  - (e) a Strategic Health Authority and Primary Care Trust for an area any part of which falls within the area of the authority;
  - (f) a person providing services under section 114 of the Learning and Skills Act 2000 (c. 21) in any part of the area of the authority; 5
  - (g) the Learning and Skills Council for England.
- (5) The relevant partners of a children’s services authority in England must co-operate with the authority in the making of arrangements under this section.
- (6) A children’s services authority in England and any of their relevant partners may for the purposes of arrangements under this section – 10
- (a) provide staff, goods, services, accommodation or other resources;
  - (b) establish and maintain a pooled fund.
- (7) For the purposes of subsection (6) a pooled fund is a fund – 15
- (a) which is made up of contributions by the authority and the relevant partner or partners concerned; and
  - (b) out of which payments may be made towards expenditure incurred in the discharge of functions of the authority and functions of the relevant partner or partners.
- (8) A children’s services authority in England and each of their relevant partners must in exercising their functions under this section have regard to any guidance given to them for the purpose by the Secretary of State. 20
- (9) Arrangements under this section may include arrangements relating to –
- (a) persons aged 18 and 19;
  - (b) persons over the age of 19 who are receiving services under sections 23C to 24D of the Children Act 1989 (c. 41); 25
  - (c) persons over the age of 19 but under the age of 25 who have a learning difficulty, within the meaning of section 13 of the Learning and Skills Act 2000, and are receiving services under that Act.
- 8 Arrangements to safeguard and promote welfare 30**
- (1) This section applies to each of the following –
- (a) a children’s services authority in England;
  - (b) a district council which is not such an authority;
  - (c) a Strategic Health Authority;
  - (d) a Primary Care Trust; 35
  - (e) an NHS trust all or most of whose hospitals, establishments and facilities are situated in England;
  - (f) an NHS foundation trust;
  - (g) the police authority and chief officer of police for a police area in England; 40
  - (h) a local probation board for an area in England;
  - (i) a youth offending team for an area in England;
  - (j) the governor of a prison or secure training centre in England (or, in the case of a contracted out prison or secure training centre, its director);
  - (k) any person to the extent that he is providing services under section 114 of the Learning and Skills Act 2000. 45

- (2) Each person and body to whom this section applies must make arrangements for ensuring that –
  - (a) their functions are discharged having regard to the need to safeguard and promote the welfare of children; and
  - (b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need.
- (3) In the case of a children’s services authority in England, the reference in subsection (2) to functions of the authority does not include functions to which section 175 of the Education Act 2002 (c. 32) applies.
- (4) Each person and body to whom this section applies must in discharging their duty under this section have regard to any guidance given to them for the purpose by the Secretary of State.

## 9 Information databases

- (1) The Secretary of State may for the purpose of arrangements under section 7 or 8 above or under section 175 of the Education Act 2002 –
  - (a) by regulations require children’s services authorities in England to establish and operate databases containing information in respect of persons to whom such arrangements relate;
  - (b) himself establish and operate, or make arrangements for the operation and establishment of, one or more databases containing such information.
- (2) The Secretary of State may for the purposes of arrangements under subsection (1)(b) by regulations establish a body corporate to establish and operate one or more databases.
- (3) A database under this section may only include information falling within subsection (4) in relation to a person to whom arrangements specified in subsection (1) relate.
- (4) The information referred to in subsection (3) is information of the following descriptions in relation to a person –
  - (a) his name, address, gender and date of birth;
  - (b) a number identifying him;
  - (c) the name and contact details of any person with parental responsibility for him (within the meaning of section 3 of the Children Act 1989 (c. 41)) or who has care of him at any time;
  - (d) details of any education being received by him (including the name and contact details of any educational institution attended by him);
  - (e) the name and contact details of any person providing primary medical services in relation to him under Part 1 of the National Health Service Act 1977 (c. 49);
  - (f) the name and contact details of any person providing to him services of such description as the Secretary of State may by regulations specify;
  - (g) information as to the existence of any cause for concern in relation to him;
  - (h) information of such other description, not including medical records or other personal records, as the Secretary of State may by regulations specify.

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- (5) The Secretary of State may by regulations make provision in relation to the establishment and operation of any database or databases under this section.
- (6) Regulations under subsection (5) may in particular make provision—
- (a) as to the information which must or may be contained in any database under this section (subject to subsection (3)); 5
  - (b) requiring a person or body specified in subsection (7) to disclose information for inclusion in the database;
  - (c) permitting a person or body specified in subsection (8) to disclose information for inclusion in the database;
  - (d) permitting or requiring the disclosure of information included in any such database; 10
  - (e) permitting or requiring any person to be given access to any such database for the purpose of adding or reading information;
  - (f) as to the conditions on which such access must or may be given;
  - (g) as to the length of time for which information must or may be retained; 15
  - (h) as to procedures for ensuring the accuracy of information included in any such database;
  - (i) in a case where a database is established by virtue of subsection (1)(b), requiring children’s services authorities in England to participate in the operation of the database. 20
- (7) The persons and bodies referred to in subsection (6)(b) are—
- (a) the persons and bodies specified in section 8(1);
  - (b) the Learning and Skills Council for England;
  - (c) the governing body of a maintained school in England (within the meaning of section 175 of the Education Act 2002 (c. 32)); 25
  - (d) the governing body of an institution in England within the further education sector (within the meaning of that section);
  - (e) the proprietor of an independent school in England (within the meaning of the Education Act 1996 (c. 56));
  - (f) a person or body of such other description as the Secretary of State may by regulations specify. 30
- (8) The persons and bodies referred to in subsection (6)(c) are—
- (a) a person registered in England for child minding or the provision of day care under Part 10A of the Children Act 1989 (c. 41);
  - (b) a voluntary organisation exercising functions or engaged in activities in relation to persons to whom arrangements specified in subsection (1) relate; 35
  - (c) the Commissioners of Inland Revenue;
  - (d) a registered social landlord;
  - (e) a person or body of such other description as the Secretary of State may by regulations specify. 40
- (9) The Secretary of State may provide information for inclusion in a database under this section.
- (10) The provision which may be made under subsection (6)(e) includes provision for a person of a description specified in the regulations to determine what must or may be done under the regulations. 45
- (11) Regulations under subsection (5) may also provide that anything which may be done under regulations under subsection (6)(c) to (e) or (9) may be done

notwithstanding any rule of common law which prohibits or restricts the disclosure of information.

- (12) Any person or body establishing or operating a database under this section must in the establishment or operation of the database have regard to any guidance, and comply with any direction, given to that person or body by the Secretary of State. 5
- (13) Guidance or directions under subsection (12) may in particular relate to—
- (a) the management of a database under this section;
  - (b) the technical specifications for any such database;
  - (c) the security of any such database; 10
  - (d) the transfer and comparison of information between databases under this section;
  - (e) the giving of advice in relation to rights under the Data Protection Act 1998 (c. 29).

*Local Safeguarding Children Boards* 15

**10 Establishment of LSCBs**

- (1) Each children’s services authority in England must establish a Local Safeguarding Children Board for their area.
- (2) A Board established under this section must include such representative or representatives of— 20
- (a) the authority by which it is established, and
  - (b) each Board partner of that authority,
- as the Secretary of State may by regulations prescribe.
- (3) For the purposes of this section each of the following is a Board partner of a children’s services authority in England— 25
- (a) where the authority is a county council for an area for which there is also a district council, the district council;
  - (b) the chief officer of police for a police area any part of which falls within the area of the authority;
  - (c) a local probation board for an area any part of which falls within the area of the authority; 30
  - (d) a youth offending team for an area any part of which falls within the area of the authority;
  - (e) a Strategic Health Authority and a Primary Care Trust for an area any part of which falls within the area of the authority; 35
  - (f) an NHS trust and an NHS foundation trust all or most of whose hospitals, establishments and facilities are situated in the area of the authority;
  - (g) a person providing services under section 114 of the Learning and Skills Act 2000 (c. 21) in any part of the area of the authority; 40
  - (h) the Children and Family Court Advisory and Support Service;
  - (i) the governor of any secure training centre in the area of the authority (or, in the case of a contracted out secure training centre, its director);
  - (j) the governor of any prison in the area of the authority which ordinarily detains children (or, in the case of a contracted out prison, its director). 45

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- (4) A children’s services authority in England must take reasonable steps to ensure that the Local Safeguarding Children Board established by them includes representatives of relevant persons and bodies of such descriptions as may be prescribed by the Secretary of State in regulations.
- (5) A Local Safeguarding Children Board established under this section may also include representatives of such other relevant persons or bodies as the authority by which it is established consider, after consulting their Board partners, should be represented on it. 5
- (6) For the purposes of subsections (4) and (5), relevant persons and bodies are persons and bodies of any nature exercising functions or engaged in activities relating to children in the area of the authority in question. 10
- (7) In the establishment of a Local Safeguarding Children Board under this section –
- (a) the authority establishing it must co-operate with each of their Board partners; and 15
  - (b) each Board partner must co-operate with the authority.
- (8) Two or more children’s services authorities in England may discharge their respective duties under subsection (1) by establishing a Local Safeguarding Children Board for their combined area (and where they do so, any reference in this section or sections 11 to 13 to the authority establishing the Board shall be read as a reference to the authorities establishing it). 20
- 11 Functions and procedure of LSCBs**
- (1) The objective of a Local Safeguarding Children Board established under section 10 is –
- (a) to co-ordinate what is done by each person or body represented on the Board for the purposes of safeguarding and promoting the welfare of children in the area of the authority by which it is established; and 25
  - (b) to ensure the effectiveness of what is done by each such person or body for those purposes.
- (2) A Local Safeguarding Children Board established under section 10 is to have such functions in relation to its objective as the Secretary of State may by regulations prescribe (which may in particular include functions of review or investigation). 30
- (3) The Secretary of State may by regulations make provision as to the procedures to be followed by a Local Safeguarding Children Board established under section 10. 35
- 12 Funding of LSCBs**
- (1) Any person or body specified in subsection (3) may make payments towards expenditure incurred by, or for purposes connected with, a Local Safeguarding Children Board established under section 10 – 40
- (a) by making the payments directly; or
  - (b) by contributing to a fund out of which the payments may be made.
- (2) Any person or body specified in subsection (3) may provide staff, goods, services, accommodation or other resources for purposes connected with a Local Safeguarding Children Board established under section 10. 45

- (3) The persons and bodies referred to in subsections (1) and (2) are—
  - (a) the children’s services authority in England by which the Board is established;
  - (b) any person who is a Board partner of the authority under section 10(3)(a) to (h);
  - (c) in a case where the governor of a secure training centre or prison is a Board partner of the authority, the Secretary of State; and
  - (d) in a case where the director of a contracted out secure training centre or prison is a Board partner of the authority, the contractor.

**13 LSCBs: supplementary** 10

- (1) The Secretary of State may by regulations make provision as to the functions of children’s services authorities in England relating to Local Safeguarding Children Boards established by them.
- (2) A children’s services authority in England and each of their Board partners must, in exercising their functions relating to a Local Safeguarding Children Board, have regard to any guidance given to them for the purpose by the Secretary of State. 15

*Local authority administration*

**14 Director of children’s services**

- (1) A children’s services authority in England may, and with effect from the appointed day must, appoint an officer for the purposes of—
  - (a) the functions conferred on or exercisable by the authority which are specified in subsection (2); and
  - (b) such other functions conferred on or exercisable by the authority as may be prescribed by the Secretary of State by regulations. 25
- (2) The functions referred to in subsection (1)(a) are—
  - (a) functions conferred on or exercisable by the authority in their capacity as a local education authority;
  - (b) functions conferred on or exercisable by the authority which are social services functions (within the meaning of the Local Authority Social Services Act 1970 (c. 42)), so far as those functions relate to children; 30
  - (c) the functions conferred on the authority under sections 23C to 24D of the Children Act 1989 (c. 41) (so far as not falling within paragraph (b));
  - (d) the functions conferred on the authority under sections 7 to 9 of this Act; and 35
  - (e) any functions exercisable by the authority under section 31 of the Health Act 1999 (c. 8) on behalf of an NHS body (within the meaning of that section), so far as those functions relate to children.
- (3) Subsection (2)(a) does not include—
  - (a) functions under section 120(3) of the Education Reform Act 1988 (c. 40) (functions of LEAs with respect to higher and further education); 40
  - (b) functions under section 85(2) and (3) of the Further and Higher Education Act 1992 (c. 13) (finance and government of locally funded further and higher education);

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- (c) functions under section 15B of the Education Act 1996 (c. 56) or section 23 of the Learning and Skills Act 2000 (c. 21) (education for persons who have attained the age of 19);
  - (d) functions under section 22 of the Teaching and Higher Education Act 1998 (c. 30) (financial support to students); 5
  - (e) such other functions conferred on or exercisable by a children’s services authority in England in their capacity as a local education authority as the Secretary of State may by regulations prescribe.
- (4) An officer appointed by a children’s services authority in England under this section is to be known as their “director of children’s services”. 10
  - (5) The director of children’s services appointed by a children’s services authority in England may also have responsibilities relating to such functions conferred on or exercisable by the authority, in addition to those specified in subsection (1), as the authority consider appropriate.
  - (6) The functions in relation to which a director of children’s services may have responsibilities by virtue of subsection (5) include those referred to in subsection (3)(a) to (e). 15
  - (7) A children’s services authority in England must have regard to any guidance given to them by the Secretary of State for the purposes of this section.
  - (8) Two or more children’s services authorities in England may for the purposes of this section, if they consider that the same person can efficiently discharge, for both or all of them, the responsibilities of director of children’s services, concur in the appointment of a person as director of children’s services for both or all of them. 20
  - (9) The amendments in Schedule 2 – 25
    - (a) have effect, in relation to any authority which appoint a director of children’s services before the appointed day, from the day of his appointment; and
    - (b) on and after the appointed day have effect for all purposes.
  - (10) In this section, “the appointed day” means such day as the Secretary of State may by order appoint. 30

## 15 Lead member for children’s services

- (1) A children’s services authority in England must, in making arrangements for the discharge of – 35
  - (a) the functions conferred on or exercisable by the authority specified in section 14(1)(a) and (b), and
  - (b) such other functions conferred on or exercisable by the authority as the authority consider appropriate,
 designate one of their members as their “lead member for children’s services”.
- (2) A children’s services authority in England must have regard to any guidance given to them by the Secretary of State for the purposes of subsection (1). 40

*Inspections of children’s services*

**16 Joint area reviews**

- (1) The Secretary of State may by regulations require the persons and bodies to which this section applies to conduct, at such times or intervals as may be specified in the regulations, reviews of all children’s services provided in the area of each children’s services authority in England. 5
- (2) Any two or more of the persons and bodies to which this section applies must, at the request of the Secretary of State, conduct a review of any children’s services provided in the area of such children’s services authority in England as may be specified in the request. 10
- (3) Any two or more of the persons and bodies to which this section applies may conduct a review of any children’s services provided in the area of a particular children’s services authority in England.
- (4) 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. 15
- (5) The persons and bodies to which this section applies are –
  - (a) the Chief Inspector of Schools;
  - (b) the Adult Learning Inspectorate;
  - (c) the Commission for Social Care Inspection; 20
  - (d) the Commission for Healthcare Audit and Inspection;
  - (e) the Audit Commission for Local Authorities and the National Health Service in England and Wales;
  - (f) the chief inspector of constabulary;
  - (g) Her Majesty’s Chief Inspector of the National Probation Service for England and Wales; 25
  - (h) Her Majesty’s Chief Inspector of Court Administration; and
  - (i) the Chief Inspector of Prisons.
- (6) Reviews under this section are to be conducted in accordance with arrangements made by the Chief Inspector of Schools. 30
- (7) Before making arrangements for the purposes of reviews under this section the Chief Inspector of Schools must consult such of the other persons and bodies to which this section applies as he considers appropriate.
- (8) The annual report of the Chief Inspector of Schools required by subsection (7)(a) of section 2 of the School Inspections Act 1996 (c. 57) to be made to the Secretary of State must include an account of reviews under this section; and the power conferred by subsection (7)(b) of that section to make other reports to the Secretary of State includes a power to make reports about such reviews. 35
- (9) The Secretary of State may by regulations make provision for the purposes of reviews under this section and in particular provision –
  - (a) requiring or facilitating the sharing or production of information for the purposes of a review under this section (including provision for the creation of criminal offences);
  - (b) authorising any person or body conducting a review under this section to enter any premises for the purposes of the review (including provision for the creation of criminal offences); 45

- (c) imposing requirements as to the making of a report on each review under this section;
  - (d) for the making by such persons as may be specified in or under the regulations of written statements of proposed action in the light of the report and the period within which any such action must or may be taken; 5
  - (e) for the disapplication, in consequence of a requirement under this section, of any requirement under any other enactment to conduct an assessment or to do anything in connection with an assessment.
- (10) Regulations under subsection (9)(a) and (b) may in particular make provision by applying enactments falling within subsection (11), with or without modification, for the purposes of reviews under this section. 10
- (11) The enactments falling within this subsection are enactments relating to the powers of persons and bodies to which this section applies for the purposes of assessments other than reviews under this section. 15

## 17 Framework

- (1) The Chief Inspector of Schools must devise a Framework for Inspection of Children’s Services (“the Framework”).
- (2) The Framework must, for the purpose specified in subsection (3), set out principles to be applied by any person or body conducting a relevant assessment. 20
- (3) The purpose referred to in subsection (2) is 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.
- (4) The principles in the Framework may – 25
- (a) include principles relating to the organisation of the results of any relevant assessment;
  - (b) make different provision for different cases.
- (5) For the purposes of subsections (2) to (4) a relevant assessment is an assessment conducted under any enactment in relation to any children’s services. 30
- (6) When devising the Framework, the Chief Inspector of Schools must consult the other persons and bodies to which section 16 applies.
- (7) The Chief Inspector of Schools must publish the Framework, but before doing so must – 35
- (a) consult such persons and bodies, other than those referred to in subsection (6), as he thinks fit; and
  - (b) obtain the consent of the Secretary of State.
- (8) The Chief Inspector of Schools may at any time revise the Framework (and subsections (6) and (7) apply in relation to revisions to the Framework as to the original Framework). 40

## 18 Co-operation and delegation

- (1) Each person or body with functions under any enactment of conducting assessments of children’s services must for the purposes of those assessments co-operate with other persons or bodies with such functions.

- (2) A person or body with functions under any enactment of conducting assessments of children’s services may delegate any of those functions to any other person or body with such functions.

**19 Sections 16 to 18: interpretation**

- (1) This section applies for the purposes of sections 16 to 18. 5
- (2) “Assessment” includes an inspection, review, investigation or study.
- (3) “Children’s services” means anything done for or in relation to children and relevant young persons (alone or with other persons) –
  - (a) in respect of which, apart from section 16, a person or body to which that section applies conducts any kind of assessment, or secures that any kind of assessment is conducted; and 10
  - (b) which is specified in, or of a description prescribed by, regulations made by the Secretary of State.
- (4) “Relevant young persons” means persons, other than children, in relation to whom arrangements under section 7 may be made. 15
- (5) “The Chief Inspector of Schools” means Her Majesty’s Chief Inspector of Schools in England.

**20 Performance rating of social services**

- (1) In section 79(2) of the Health and Social Care (Community Health and Standards) Act 2003 (c.43) (duty of Commission for Social Care Inspection to award a performance rating to a local authority), for the words from “a performance rating” to the end substitute –
  - “(a) a performance rating to that authority in respect of all the English local authority social services provided by, or pursuant to arrangements made by, that authority –
    - (i) to or so far as relating to persons under the age of eighteen; or 25
    - (ii) under sections 23C to 24D of the Children Act 1989; and
  - (b) a performance rating to that authority in respect of all other English local authority social services provided by, or pursuant to arrangements made by, that authority.” 30
- (2) In section 81(2) of that Act (duty of the Commission to inform the Secretary of State where it awards the lowest performance rating under section 79), for “section 79” substitute “section 79(2)(a) or (b)”.

**PART 3** 35

CHILDREN’S SERVICES IN WALES

*General*

**21 Co-operation to improve well-being: Wales**

- (1) Each children’s services authority in Wales must make arrangements to promote co-operation between – 40
  - (a) the authority;

- 
- (b) each of the authority’s relevant partners; and
- (c) such other persons or bodies as the authority consider appropriate, being persons or bodies of any nature who exercise functions or are engaged in activities in relation to children in the authority’s area.
- (2) The arrangements are to be made with a view to improving the well-being of children in the authority’s area so far as relating to – 5
- (a) physical and mental health;
- (b) protection from harm and neglect;
- (c) education, training and recreation;
- (d) the contribution made by them to society; 10
- (e) social and economic well-being.
- (3) In making arrangements under this section a children’s services authority in Wales must have regard to the importance of parents and other persons caring for children in improving the well-being of children.
- (4) For the purposes of this section each of the following is the relevant partner of a children’s services authority in Wales – 15
- (a) the police authority and the chief officer of police for a police area any part of which falls within the area of the children’s services authority;
- (b) a local probation board for an area any part of which falls within the area of the authority; 20
- (c) a youth offending team for an area any part of which falls within the area of the authority;
- (d) a Local Health Board for an area any part of which falls within the area of the authority;
- (e) an NHS trust all or most of whose hospitals, establishments and facilities are situated in the area of the authority; 25
- (f) the National Council for Education and Training for Wales.
- (5) The relevant partners of a children’s services authority in Wales must co-operate with the authority in the making of arrangements under this section.
- (6) A children’s services authority in Wales and any of their relevant partners may for the purposes of arrangements under this section – 30
- (a) provide staff, goods, services, accommodation or other resources;
- (b) establish and maintain a pooled fund.
- (7) For the purposes of subsection (6) a pooled fund is a fund – 35
- (a) which is made up of contributions by the authority and the relevant partner or partners concerned; and
- (b) out of which payments may be made towards expenditure incurred in the discharge of functions of the authority and functions of the relevant partner or partners.
- (8) A children’s services authority in Wales and each of their relevant partners must in exercising their functions under this section have regard to any guidance given to them for the purpose by the Assembly. 40
- (9) Arrangements under this section may include arrangements relating to –
- (a) persons aged 18 and 19;
- (b) persons over the age of 19 who are receiving – 45
- (i) services under sections 23C to 24D of the Children Act 1989 (c. 41); or

- (ii) youth support services (within the meaning of section 123 of the Learning and Skills Act 2000 (c. 21)).

## 22 Responsibility for functions under section 21

- (1) A children’s services authority in Wales must –
  - (a) appoint an officer, to be known as the “lead director for children and young people’s services”, for the purposes of co-ordinating and overseeing arrangements made under section 21; and 5
  - (b) designate one of their members, to be known as the “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. 10
- (2) A Local Health Board must –
  - (a) appoint an officer, to be known as the Board’s “lead officer for children and young people’s services”, for the purposes of the Board’s functions under section 21; and
  - (b) designate one of the Board’s members who is not an officer as its “lead member for children and young people’s services” to have the discharge of those functions as his special care. 15
- (3) An NHS trust to which section 21 applies must –
  - (a) appoint an executive director, to be known as the trust’s “lead executive director for children and young people’s services”, for the purposes of the trust’s functions under that section; and 20
  - (b) designate one of the trust’s non-executive directors as its “lead non-executive director for children and young people’s services” to have the discharge of those functions as his special care.
- (4) Each children’s services authority in Wales, Local Health Board and NHS trust to which section 21 applies must have regard to any guidance given to them by the Assembly in relation to –
  - (a) their functions under this section;
  - (b) the responsibilities of the persons appointed or designated by them under this section. 30

## 23 Arrangements to safeguard and promote welfare: Wales

- (1) This section applies to each of the following –
  - (a) a children’s services authority in Wales;
  - (b) a Local Health Board;
  - (c) an NHS trust all or most of whose hospitals, establishments and facilities are situated in Wales; 35
  - (d) the police authority and chief officer of police for a police area in Wales;
  - (e) a local probation board for an area in Wales;
  - (f) a youth offending team for an area in Wales;
  - (g) the governor of a prison or secure training centre in Wales (or, in the case of a contracted out prison or secure training centre, its director); 40
  - (h) any person to the extent that he is providing services pursuant to arrangements made by a children’s services authority in Wales under section 123(1)(b) of the Learning and Skills Act 2000 (youth support services). 45

- (2) Each person and body to whom this section applies must make arrangements for ensuring that –
- (a) their functions are discharged having regard to the need to safeguard and promote the welfare of children; and
  - (b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need. 5
- (3) In the case of a children’s services authority in Wales, the reference in subsection (2) to functions of the authority does not include functions to which section 175 of the Education Act 2002 (c. 32) applies. 10
- (4) The persons and bodies referred to in subsection (1)(a) to (c) and (h) must in discharging their duty under this section have regard to any guidance given to them for the purpose by the Assembly.
- (5) The persons and bodies referred to in subsection (1)(d) to (g) must in discharging their duty under this section have regard to any guidance given to them for the purpose by the Secretary of State after consultation with the Assembly. 15

#### 24 Information databases: Wales

- (1) The Assembly may for the purpose of arrangements under section 21 or 23 above or under section 175 of the Education Act 2002 – 20
- (a) by regulations require children’s services authorities in Wales to establish and operate databases containing information in respect of persons to whom such arrangements relate;
  - (b) itself establish and operate, or make arrangements for the operation and establishment of, one or more databases containing such information. 25
- (2) The Assembly may for the purposes of arrangements under subsection (1)(b) by regulations establish a body corporate to establish and operate one or more databases.
- (3) A database under this section may only include information falling within subsection (4) in relation to a person to whom arrangements specified in subsection (1) relate. 30
- (4) The information referred to in subsection (3) is information of the following descriptions in relation to a person –
- (a) his name, address, gender and date of birth; 35
  - (b) a number identifying him;
  - (c) the name and contact details of any person with parental responsibility for him (within the meaning of section 3 of the Children Act 1989 (c. 41)) or who has care of him at any time;
  - (d) details of any education being received by him (including the name and contact details of any educational institution attended by him); 40
  - (e) the name and contact details of any person providing primary medical services in relation to him under Part 1 of the National Health Service Act 1977 (c. 49);
  - (f) the name and contact details of any person providing to him services of such description as the Assembly may by regulations specify; 45

- (g) information as to the existence of any cause for concern in relation to him;
  - (h) information of such other description, not including medical records or other personal records, as the Assembly may by regulations specify.
- (5) The Assembly may by regulations make provision in relation to the establishment and operation of any database or databases under this section. 5
- (6) Regulations under subsection (5) may in particular make provision –
  - (a) as to the information which must or may be contained in any database under this section (subject to subsection (3));
  - (b) requiring a person or body specified in subsection (7) to disclose information for inclusion in the database; 10
  - (c) permitting a person or body specified in subsection (8) to disclose information for inclusion in the database;
  - (d) permitting or requiring the disclosure of information included in any such database; 15
  - (e) permitting or requiring any person to be given access to any such database for the purpose of adding or reading information;
  - (f) as to the conditions on which such access must or may be given;
  - (g) as to the length of time for which information must or may be retained;
  - (h) as to procedures for ensuring the accuracy of information included in any such database; 20
  - (i) in a case where a database is established by virtue of subsection (1)(b), requiring children’s services authorities in Wales to participate in the operation of the database.
- (7) The persons and bodies referred to in subsection (6)(b) are – 25
  - (a) the persons and bodies specified in section 23(1);
  - (b) the National Council for Education and Training for Wales;
  - (c) the governing body of a maintained school in Wales (within the meaning of section 175 of the Education Act 2002 (c. 32));
  - (d) the governing body of an institution in Wales within the further education sector (within the meaning of that section); 30
  - (e) the proprietor of an independent school in Wales (within the meaning of the Education Act 1996 (c. 56));
  - (f) a person or body of such other description as the Assembly may by regulations specify. 35
- (8) The persons and bodies referred to in subsection (6)(c) are –
  - (a) a person registered in Wales for child minding or the provision of day care under Part 10A of the Children Act 1989 (c. 41);
  - (b) a voluntary organisation exercising functions or engaged in activities in relation to persons to whom arrangements specified in subsection (1) relate; 40
  - (c) the Commissioners of Inland Revenue;
  - (d) a registered social landlord;
  - (e) a person or body of such other description as the Assembly may by regulations specify. 45
- (9) The Assembly and the Secretary of State may provide information for inclusion in a database under this section.

- (10) The provision which may be made under subsection (6)(e) includes provision for a person of a description specified in the regulations to determine what must or may be done under the regulations.
- (11) Regulations under subsection (5) may also provide that anything which may be done under regulations under subsection (6)(c) to (e) or (9) may be done notwithstanding any rule of common law which prohibits or restricts the disclosure of information. 5
- (12) Any person or body establishing or operating a database under this section must in the establishment or operation of the database have regard to any guidance, and comply with any direction, given to that person by the Assembly. 10
- (13) Guidance or directions under subsection (12) may in particular relate to—
- (a) the management of a database under this section;
  - (b) the technical specifications for any such database;
  - (c) the security of any such database; 15
  - (d) the transfer and comparison of information between databases under this section;
  - (e) the giving of advice in relation to rights under the Data Protection Act 1998 (c. 29).

*Local Safeguarding Children Boards* 20

**25 Establishment of LSCBs in Wales**

- (1) Each children’s services authority in Wales must establish a Local Safeguarding Children Board for their area.
- (2) A Board established under this section must include such representative or representatives of— 25
- (a) the authority by which it is established, and
  - (b) each Board partner of that authority,
- as the Assembly may by regulations prescribe.
- (3) For the purposes of this section each of the following is a Board partner of a children’s services authority in Wales— 30
- (a) the chief officer of police for a police area any part of which falls within the area of the authority;
  - (b) a local probation board for an area any part of which falls within the area of the authority;
  - (c) a youth offending team for an area any part of which falls within the area of the authority; 35
  - (d) a Local Health Board for an area any part of which falls within the area of the authority;
  - (e) an NHS trust all or most of whose hospitals, establishments and facilities are situated in the area of the authority; 40
  - (f) the governor of any secure training centre within the area of the authority (or, in the case of a contracted out secure training centre, its director);
  - (g) the governor of any prison in the area of the authority which ordinarily detains children (or, in the case of a contracted out prison, its director). 45

- (4) A children’s services authority in Wales must take reasonable steps to ensure that the Local Safeguarding Children Board established by them includes representatives of relevant persons and bodies of such descriptions as may be prescribed by the Assembly in regulations.
- (5) A Local Safeguarding Children Board established under this section may also include representatives of such other relevant persons or bodies as the authority by which it is established consider, after consulting their Board partners, should be represented on it. 5
- (6) For the purposes of subsections (4) and (5), relevant persons and bodies are persons and bodies of any nature exercising functions or engaged in activities relating to children in the area of the authority in question. 10
- (7) In the establishment of a Local Safeguarding Children Board under this section –
  - (a) the authority establishing it must co-operate with each of their Board partners; and
  - (b) each Board partner must co-operate with the authority. 15
- (8) Two or more children’s services authorities in Wales may discharge their respective duties under subsection (1) by establishing a Local Safeguarding Children Board for their combined area (and where they do so, any reference in this section and sections 26 to 28 to the authority establishing the Board shall be read as a reference to the authorities establishing it). 20

## 26 Functions and procedure of LSCBs in Wales

- (1) The objective of a Local Safeguarding Children Board established under section 25 is –
  - (a) to co-ordinate what is done by each person or body represented on the Board for the purposes of safeguarding and promoting the welfare of children in the area of the authority by which it is established; and
  - (b) to ensure the effectiveness of what is done by each such person or body for those purposes. 25
- (2) A Local Safeguarding Children Board established under section 25 is to have such functions in relation to its objective as the Assembly may by regulations prescribe (which may in particular include functions of review or investigation). 30
- (3) The Assembly may by regulations make provision as to the procedures to be followed by a Local Safeguarding Children Board established under section 25. 35

## 27 Funding of LSCBs in Wales

- (1) Any person or body specified in subsection (3) may make payments towards expenditure incurred by, or for purposes connected with, a Local Safeguarding Children Board established under section 25 –
  - (a) by making the payments directly, or
  - (b) by contributing to a fund out of which the payments may be made. 40
- (2) Any person or body specified in subsection (3) may provide staff, goods, services, accommodation or other resources for purposes connected with a Local Safeguarding Children Board established under section 25.

- (3) The persons and bodies referred to in subsections (1) and (2) are –
- (a) the children’s services authority in Wales by which the Board is established;
  - (b) any person who is a Board partner of the authority under section 25(3)(a) to (e);
  - (c) in a case where the governor of a secure training centre or prison is a Board partner of the authority, the Secretary of State; and
  - (d) in a case where the director of a contracted out secure training centre or prison is a Board partner of the authority, the contractor.
- 28 LSCBs in Wales: supplementary** 10
- (1) The Assembly may by regulations make provision as to the functions of children’s services authorities in Wales relating to Local Safeguarding Children Boards established by them.
- (2) A children’s services authority in Wales and each of their Board partners must, in exercising their functions relating to a Local Safeguarding Children Board, have regard to any guidance given to them for the purpose by the Assembly. 15

#### PART 4

##### ADVISORY AND SUPPORT SERVICES FOR FAMILY PROCEEDINGS

##### *CAFCASS functions in Wales*

- 29 Functions of the Assembly relating to family proceedings** 20
- (1) In respect of family proceedings in which the welfare of children ordinarily resident in Wales is or may be in question, it is a function of the Assembly to –
- (a) safeguard and promote the welfare of the children;
  - (b) give advice to any court about any application made to it in such proceedings;
  - (c) make provision for the children to be represented in such proceedings;
  - (d) provide information, advice and other support for the children and their families.
- (2) The Assembly must also make provision for the performance of the functions conferred on Welsh family proceedings officers by virtue of any enactment (whether or not they are exercisable for the purposes of subsection (1)). 30
- (3) In subsection (1), “family proceedings” has the meaning given by section 12 of the Criminal Justice and Court Services Act 2000 (c. 43).
- (4) In this Part, “Welsh family proceedings officer” means –
- (a) any member of the staff of the Assembly appointed to exercise the functions of a Welsh family proceedings officer; and
  - (b) any other individual exercising functions of a Welsh family proceedings officer by virtue of section 30(2) or (4). 35

### 30 Ancillary powers of the Assembly

- (1) The Assembly may make arrangements with organisations under which the organisations perform the functions of the Assembly under section 29 on its behalf.
- (2) Arrangements under subsection (1) may provide for the organisations to designate individuals who may perform functions of Welsh family proceedings officers. 5
- (3) The Assembly may only make an arrangement under subsection (1) if it is of the opinion –
  - (a) that the functions in question will be performed efficiently and to the required standard; and 10
  - (b) that the arrangement represents good value for money.
- (4) The Assembly may make arrangements with individuals under which they may perform functions of Welsh family proceedings officers.
- (5) The Assembly may make arrangements with an organisation or individual under which staff of the Assembly engaged in the exercise of its functions under section 29 may work for the organisation or individual. 15
- (6) The Assembly may make arrangements with an organisation or individual under which any services provided by the Assembly’s staff to the Assembly in the exercise of its functions under section 29 are also made available to the organisation or individual. 20
- (7) The Assembly may charge for anything done under arrangements under subsection (5) and (6).
- (8) In this section, references to organisations include public bodies and private or voluntary organisations. 25

### 31 Welsh family proceedings officers

- (1) The Assembly may authorise a Welsh family proceedings officer of a description prescribed in regulations made by the Secretary of State –
  - (a) to conduct litigation in relation to any proceedings in any court,
  - (b) to exercise a right of audience in any proceedings in any court,in the exercise of his functions. 30
- (2) A Welsh family proceedings officer exercising a right to conduct litigation by virtue of subsection (1)(a) who would otherwise have such a right by virtue of section 28(2)(a) of the Courts and Legal Services Act 1990 (c. 41) is to be treated as having acquired that right solely by virtue of this section. 35
- (3) A Welsh family proceedings officer exercising a right of audience by virtue of subsection (1)(b) who would otherwise have such a right by virtue of section 27(2)(a) of the Courts and Legal Services Act 1990 is to be treated as having acquired that right solely by virtue of this section.
- (4) A Welsh family proceedings officer may, subject to rules of court, be cross-examined in any proceedings to the same extent as any witness. 40
- (5) But a Welsh family proceedings officer may not be cross-examined merely because he is exercising a right to conduct litigation or a right of audience granted in accordance with this section.

- (6) In this section, “right to conduct litigation” and “right of audience” have the same meanings as in section 119 of the Courts and Legal Services Act 1990 (c. 41).

### 32 Inspections

- (1) Her Majesty’s Inspectorate of Court Administration must at the request of the Assembly inspect, and report to the Assembly on – 5
- (a) the discharge by the Assembly of its functions under this Part; and
  - (b) the discharge by Welsh family proceedings officers of their functions under this Part and any other enactment.
- (2) The Assembly may only make a request under subsection (1) with the consent of the Secretary of State. 10

### 33 Protection of children

- (1) The Protection of Children Act 1999 (c. 14) (“the 1999 Act”) shall have effect as if the Assembly, in performing its functions under sections 29 and 30, were a child care organisation within the meaning of that Act. 15
- (2) Arrangements which the Assembly makes with an organisation under section 30(1) must provide that, before selecting an individual to be employed under the arrangements in a child care position, the organisation –
- (a) must ascertain whether the individual is included in any of the lists mentioned in section 7(1) of the 1999 Act, and 20
  - (b) if he is included in any of those lists, must not select him for that employment.
- (3) Such arrangements must provide that, if at any time the organisation has power to refer an individual who is or has been employed in a child care position under the arrangements to the Secretary of State under section 2 of the 1999 Act (inclusion in list on reference following disciplinary actions etc), the organisation must so refer him. 25
- (4) In this section, “child care position” and “employment” have the same meanings as in the 1999 Act.

### 34 Advisory and support services for family proceedings: supplementary 30

Schedule 3 (which makes supplementary and consequential provision relating to this Part, including provision relating to functions of Welsh family proceedings officers) has effect.

#### *Transfers*

### 35 Transfer of property from CAFCASS to Assembly 35

- (1) For the purposes of the exercise of functions conferred on the Assembly by or under this Part, the Assembly and the Secretary of State may jointly by order make one or more schemes for the transfer to the Assembly of property, rights and liabilities of the Children and Family Court Advisory and Support Service (in this section, “CAFCASS”). 40

- (2) The reference in subsection (1) to rights and liabilities does not include rights and liabilities under a contract of employment.
- (3) A scheme under this section may –
  - (a) specify the property, rights and liabilities to be transferred by the scheme; or
  - (b) provide for the determination, in accordance with the scheme, of the property, rights and liabilities to be transferred by the scheme.
- (4) A scheme under this section may include provision for the creation of rights, or the imposition of liabilities, in relation to property transferred by the scheme.
- (5) A scheme under this section has effect in relation to any property, rights and liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict their transfer.
- (6) A right of pre-emption or reverter or other similar right does not operate or become exercisable as a result of any transfer under a scheme under this section; and in the case of such a transfer, any such right has effect as if the Assembly were the same person in law as CAFCASS and as if the transfer had not taken place.
- (7) The Assembly is to pay such compensation as is just to any person in respect of any right which would, apart from subsections (5) and (6), have operated in favour of, or become exercisable by, that person but which, in consequence of the operation of those subsections, cannot subsequently operate in his favour or become exercisable by him.
- (8) A scheme under this section may provide for the determination of any disputes as to whether and, if so, how much compensation is payable under subsection (7).
- (9) Subsections (5) to (8) apply in relation to the creation of rights in relation to property as they apply in relation to a transfer of property.
- (10) A certificate issued by the Secretary of State and the Assembly jointly that any property, rights or liabilities have or have not been transferred by a scheme under this section is conclusive evidence as to whether they have or have not been so transferred.

### **36 Transfer of staff from CAFCASS to Assembly**

- (1) For the purpose of the exercise of functions conferred on the Assembly by or under this Part, the Assembly and the Secretary of State may jointly by order make one or more schemes for the transfer of employees of CAFCASS to the Assembly.
- (2) A scheme under this section may apply –
  - (a) to any description of employees of CAFCASS;
  - (b) to any individual employee of CAFCASS.
- (3) A contract of employment of an employee transferred under a scheme under this section –
  - (a) is not terminated by the transfer; and
  - (b) has effect from the date of the transfer under the scheme as if originally made between the employee and the Assembly.

- (4) Where an employee is so transferred –
- (a) all the rights, powers, duties and liabilities of CAFCASS under or in connection with the contract of employment are by virtue of this subsection transferred to the Assembly on the date of the transfer under the scheme; and 5
  - (b) anything done before that date by or in relation to CAFCASS in respect of that contract or the employee is to be treated from that date as having been done by or in relation to the Assembly.
- This subsection does not prejudice the generality of subsection (3).
- (5) But if the employee informs the Assembly or CAFCASS that he objects to the transfer – 10
- (a) subsections (3) and (4) do not apply; and
  - (b) his contract of employment is terminated immediately before the date of transfer but the employee is not to be treated, for any reason, as having been dismissed by CAFCASS. 15
- (6) This section does not prejudice any right of an employee to terminate his contract of employment if (apart from the change of employer) a substantial change is made to his detriment in his working conditions.
- (7) A scheme may be made under this section only if any requirements about consultation prescribed in regulations made by the Secretary of State and the Assembly jointly have been complied with in relation to each of the employees of CAFCASS to be transferred under the scheme. 20
- (8) In this section “CAFCASS” has the same meaning as in section 35.

## PART 5

### MISCELLANEOUS 25

#### *Private fostering*

### 37 Amendments to notification scheme

- (1) Section 67 of the Children Act 1989 (c. 41) (welfare of privately fostered children) is amended as specified in subsections (2) to (6).
- (2) In subsection (1) – 30
- (a) after “who are” insert “or are proposed to be”;
  - (b) after “is being” insert “or will be”;
  - (c) for “caring for” substitute “concerned with”.
- (3) After subsection (2) insert –
- “(2A) Regulations under subsection (2)(b) may impose requirements as to the action to be taken by a local authority for the purposes of discharging their duty under subsection (1) where they have received notification of a proposal that a child be privately fostered.” 35
- (4) In subsection (3) for “to visit privately fostered children” substitute “for the purpose”. 40
- (5) In subsection (5) –
- (a) after “child who is” insert “or is proposed to be”;

- (b) after “is being” insert “or will be”.
- (6) After subsection (5) insert –
- “(6) The Secretary of State may make regulations requiring a local authority to monitor the way in which the authority discharge their functions under this Part (and the regulations may in particular require the authority to appoint an officer for that purpose).” 5
- (7) In Schedule 8 to that Act (privately fostered children) after paragraph 7 insert –
- “7A Every local authority must promote public awareness in their area of requirements as to notification for which provision is made under paragraph 7.” 10
- (8) The reference to that Act in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) is to be treated as referring to that Act as amended by this section.
- 38 Power to establish registration scheme in England 15**
- (1) The Secretary of State may by regulations require any person who fosters a child privately in the area of a children’s services authority in England to be registered for private fostering by that authority in accordance with the regulations.
- (2) Regulations under this section may make supplementary provision relating to the registration of persons for private fostering, including provision as to – 20
- (a) how a person applies for registration and the procedure to be followed in considering an application;
- (b) the requirements to be satisfied before a person may be registered;
- (c) the circumstances in which a person is disqualified from being registered; 25
- (d) the circumstances in which an application for registration may or must be granted or refused;
- (e) the payment of a fee on the making or granting of an application for registration; 30
- (f) the imposition of conditions on registration and the variation or cancellation of such conditions;
- (g) the circumstances in which a person’s registration may be, or be regarded as, cancelled;
- (h) the making of appeals against any determination of a children’s services authority in England in relation to a person’s registration; 35
- (i) temporary registration, or circumstances in which a person may be regarded as registered;
- (j) requirements to be complied with by a children’s services authority in England or a person registered under the regulations. 40
- (3) The provision which may be made under subsection (2)(a) includes provision that any person who, in an application for registration under the regulations, knowingly makes a statement which is false or misleading in a material particular is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale. 45

- 
- (4) The requirements for which provision may be made under subsection (2)(b) include requirements relating to—
- (a) the suitability of the applicant to foster children privately;
  - (b) the suitability of the premises in which it is proposed to foster children privately (including their suitability by reference to any other person living there). 5
- (5) The provision which may be made under subsection (2)(c) includes provision that a person may be disqualified where—
- (a) an order of a kind specified in the regulations has been made at any time with respect to him; 10
  - (b) an order of a kind so specified has been made at any time with respect to any child who has been in his care;
  - (c) a requirement of a kind so specified has been imposed at any time with respect to any such child, under or by virtue of any enactment;
  - (d) he has been convicted of a criminal offence of a kind so specified, or a probation order has been made in respect of him for any such offence or he has been discharged absolutely or conditionally for any such offence; 15
  - (e) a prohibition has been imposed on him under any specified enactment;
  - (f) his rights and powers with respect to a child have at any time been vested in a specified authority under a specified enactment; 20
  - (g) he lives in the same household as a person who is himself disqualified from being registered or in a household in which such a person is employed.
- (6) The provision which may be made under subsection (2)(c) also includes provision for a children’s services authority in England to determine whether a person is or is not to be disqualified. 25
- (7) The conditions for which provision may be made under subsection (2)(f) include conditions relating to—
- (a) the maintenance of premises in which children are, or are proposed to be, privately fostered; 30
  - (b) any other persons living at such premises.
- (8) The provision which may be made under subsection (2)(j) includes—
- (a) a requirement that a person registered under the regulations obtain the consent of the children’s services authority in England by whom he is registered before privately fostering a child; 35
  - (b) provision relating to the giving of such consent (including provision as to the circumstances in which, or conditions subject to which, it may or must be given).
- (9) The provision which may be made under subsection (2)(j) also includes— 40
- (a) a requirement for a children’s services authority in England to undertake annual inspections in relation to persons registered under the regulations (whether in fact privately fostering children or not); and
  - (b) provision for the payment of a fee by registered persons in respect of such inspections. 45
- (10) Regulations under this section may—

- (a) authorise a children’s services authority in England to issue a notice to any person whom they believe to be fostering a child privately in their area without being registered in accordance with the regulations; and
  - (b) provide that a person who, without reasonable excuse, fosters a child privately without being registered in accordance with the regulations while such a notice is issued in respect of him is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale. 5
- (11) Regulations under this section may provide that a person registered under the regulations who without reasonable excuse contravenes or otherwise fails to comply with any requirement imposed on him in the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale. 10
- (12) Regulations under this section may provide that a person who fosters a child privately while he is disqualified from being registered is guilty of an offence unless – 15
  - (a) he is disqualified by virtue of the fact that he lives in the same household as a person who is himself disqualified from being registered or in a household in which such a person is employed; and
  - (b) he did not know, and had no reasonable grounds for believing, that that person was so disqualified. 20
- (13) Where regulations under this section make provision under subsection (12), they must provide that a person who is guilty of the offence referred to in that subsection is liable on summary conviction to – 25
  - (a) a fine not exceeding level 5 on the standard scale, or
  - (b) a term of imprisonment not exceeding six months, or
  - (c) both.
- (14) Regulations under this section may –
  - (a) make consequential amendments (including repeals) to sections 67(2) to (6) and 68 to 70 of, and paragraphs 6 to 9 of Schedule 8 to, the Children Act 1989 (c. 41); 30
  - (b) amend Schedule 1 to the Local Authority Social Services Act 1970 (c. 42) (social services functions) as to add functions of a children’s services authority in England under this section to the functions listed in that Schedule. 35
- (15) Nothing in this section affects the scope of section 53(1).
- (16) For the purposes of this section references to a person fostering a child privately have the same meaning as in the Children Act 1989.

### **39 Power to establish registration scheme in Wales**

- (1) The Assembly may by regulations require any person who fosters a child privately in the area of a children’s services authority in Wales to be registered for private fostering by that authority in accordance with the regulations. 40
- (2) Subsections (2) to (15) of section 38 apply in relation to regulations under this section as they apply in relation to regulations under that section with the substitution for references to a children’s services authority in England of references to a children’s services authority in Wales. 45

- (3) Subsection (16) of that section applies for the purposes of this section.

#### 40 Expiry of powers in sections 38 and 39

- (1) If no regulations have been made under section 38 by the relevant time, that section shall (other than for the purposes of section 39(2) and (3)) cease to have effect at that time. 5
- (2) If no regulations have been made under section 39 by the relevant time, that section shall cease to have effect at that time.
- (3) In this section, the relevant time is the end of the period of four years beginning with the day on which this Act is passed.

#### *Child minding and day care*

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#### 41 Child minding and day care

Schedule 4 (which makes provision amending Part 10A of the Children Act 1989 (c. 41) in relation to child minding and day care) has effect.

#### *Local authority services*

#### 42 Intervention

15

- (1) Section 497A of the Education Act 1996 (c. 56) (power to secure proper performance of a local education authority's functions) applies in relation to—  
 (a) the relevant functions of a children's services authority in England, and  
 (b) the relevant functions of a children's services authority in Wales,  
 as it applies in relation to the functions of a local education authority referred to in subsection (1) of that section. 20
- (2) For the purposes of this section, the relevant functions of a children's services authority in England or Wales are—  
 (a) functions conferred on or exercisable by the authority which are social services functions, so far as those functions relate to children; 25  
 (b) the functions conferred on the authority under sections 23C to 24D of the Children Act 1989 (so far as not falling within paragraph (a)); and  
 (c) the functions conferred on the authority under sections 7 and 9 above (in the case of a children's services authority in England) or under sections 21 and 24 above (in the case of a children's services authority in Wales). 30
- (3) In subsection (2)(a) "social services functions" has the same meaning as in the the Local Authority Social Services Act 1970 (c. 42).
- (4) Sections 497AA and 497B of the Education Act 1996 apply accordingly where powers under section 497A of that Act are exercised in relation to any of the relevant functions of a children's services authority in England or Wales. 35
- (5) In the application of sections 497A(2) to (7), 497AA and 497B of that Act in relation to the relevant functions of a children's services authority in England or Wales, references to the local education authority are to be read as references to the children's services authority in England or Wales. 40

- (6) In subsection (5) of section 497A of that Act, the reference to functions to which that section applies includes (for all purposes) relevant functions of a children’s services authority in England or Wales.

#### **43 Inspection of local education authorities**

- (1) In section 38 of the Education Act 1997 (c. 44) (inspection of LEAs), for subsection (2) substitute – 5
- “(2) An inspection of a local education authority under this section shall, subject to subsection (2A), consist of a review of the way in which the authority are performing any function of theirs.
- (2A) In the case of a local education authority in England, the reference in subsection (2) to any function of the authority does not include a function falling within the remit of the Adult Learning Inspectorate under section 53 of the Learning and Skills Act 2000.” 10
- (2) In section 28D of the Disability Discrimination Act 1995 (c. 50) (accessibility strategies and plans), omit subsection (6). 15

#### **44 Duty of local authorities to promote educational achievement**

In section 22 of the Children Act 1989 (c. 41) (general duty of local authority in relation to children looked after by them), after subsection (3) insert –

- “(3A) The duty of a local authority under subsection (3)(a) to safeguard and promote the welfare of a child looked after by them includes in particular a duty to promote the child’s educational achievement.” 20

#### **45 Ascertaining children’s wishes**

In section 17 of the Children Act 1989 (provision of services to children), after subsection (4) insert –

- “(4A) Before determining what (if any) services to provide for a particular child in need in the exercise of functions conferred on them by this section, a local authority shall, so far as is reasonably practicable and consistent with the child’s welfare – 25
- (a) ascertain the child’s wishes regarding the provision of those services; and 30
- (b) give due consideration (having regard to his age and understanding) to such wishes of the child as they have been able to ascertain.”

#### **46 Information about individual children**

In section 83 of the Children Act 1989 (research and returns of information), after subsection (4) insert – 35

- “(4A) Particulars required to be transmitted under subsection (3) or (4) may include particulars relating to and identifying individual children.”

#### **47 Miscellaneous amendments for Parts 2 and 3**

- (1) In Schedule 1 to the Local Authority Social Services Act 1970 (c. 42) (functions 40

which are social services functions), at the end insert –

“Children Act 2004

Sections 10 to 13 and 25 to 28

Functions relating to Local  
Safeguarding Children Boards.”

- (2) In Schedule 2 to the Children Act 1989 (c. 41) (local authority support for children and families), omit paragraph 1A (duty to produce children’s services plans). 5

*Other provisions*

**48 Fees payable to adoption review panel members**

In section 12 of the Adoption and Children Act 2002 (c. 38) (independent review of determinations), in subsection (3)(d) (power to make provision as to the payment of expenses of members of a panel) for “expenses of” substitute “fees to”. 10

**49 Reasonable punishment**

- (1) In relation to any offence specified in subsection (2), battery of a child cannot be justified on the ground that it constituted reasonable punishment. 15
- (2) The offences referred to in subsection (1) are –
- (a) an offence under section 18 or 20 of the Offences against the Person Act 1861 (c. 100) (wounding and causing grievous bodily harm);
  - (b) an offence under section 47 of that Act (assault occasioning actual bodily harm); 20
  - (c) an offence under section 1 of the Children and Young Persons Act 1933 (c. 12) (cruelty to persons under 16).
- (3) Battery of a child causing actual bodily harm to the child cannot be justified in any civil proceedings on the ground that it constituted reasonable punishment. 25
- (4) For the purposes of subsection (3) “actual bodily harm” has the same meaning as it has for the purposes of section 47 of the Offences against the Person Act 1861.
- (5) In section 1 of the Children and Young Persons Act 1933, omit subsection (7).

**50 Power to give financial assistance** 30

- (1) Section 14 of the Education Act 2002 (c. 32) (power of Secretary of State and Assembly to give financial assistance for purposes related to education or childcare) is amended as specified in subsections (2) to (4).
- (2) In subsection (2) of that section (purposes for which assistance may be given), at the end insert – 35
- “(j) the promotion of the welfare of children and their parents;
  - (k) the provision of support for parenting (including support for prospective parents).”

- (3) After that subsection insert –  
“(2A) In subsection (2)(j), “children” means persons under the age of twenty.”
- (4) In the heading to that section, for “childcare” substitute “children etc”.
- (5) In the heading to Part 2 of that Act, for “childcare” substitute “children etc”.

**51 Child safety orders** 5

- (1) The Crime and Disorder Act 1998 (c. 37) is amended as follows.
- (2) In section 8(1)(a) (power to make parenting order where a child safety order is made), at the end insert “or the court determines on an application under section 12(6) below that a child has failed to comply with any requirement included in such an order”. 10
- (3) In section 11(4) (maximum period permitted for child safety orders), for the words from “three months” to the end substitute “twelve months”.
- (4) In section 12, omit subsections (6)(a) and (7) (power to make care order on breach of child safety order).

**PART 6** 15

GENERAL

**52 Interpretation**

- (1) In this Act –
  - “the Assembly” means the National Assembly for Wales;
  - “child” means, subject to section 2(10), a person under the age of eighteen (and “children” is to be construed accordingly); 20
  - “children’s services authority in England” means –
    - (a) a county council in England;
    - (b) a metropolitan district council;
    - (c) a non-metropolitan district council for an area for which there is no county council; 25
    - (d) a London borough council;
    - (e) the Common Council of the City of London;
    - (f) the Council of the Isles of Scilly;
  - “children’s services authority in Wales” means a county council or county borough council in Wales. 30
- (2) This Act applies in relation to the Isles of Scilly subject to such modifications as may be specified by order made by the Secretary of State.
- (3) In this Act –
  - (a) references to a prison include a young offender institution; 35
  - (b) references to a contracted out secure training centre, and to the contractor in relation to such a secure training centre, have the meanings given by section 15 of the Criminal Justice and Public Order Act 1994 (c. 33);

- (c) references to a contracted out prison, and to the contractor in relation to such a prison, have the meanings given by section 84(4) of the Criminal Justice Act 1991 (c. 53).
- (4) Where—
- (a) a contract under section 7 of the Criminal Justice and Public Order Act 1994 (c. 33) is for the time being in force in relation to part of a secure training centre, or 5
- (b) a contract under section 84 of the Criminal Justice Act 1991 is for the time being in force in relation to part of a prison,
- this Act has effect as if each part of the secure training centre or prison were a separate institution. 10

### 53 Regulations and orders

- (1) Any power to make regulations or an order under this Act includes power—
- (a) to make different provision for different purposes;
- (b) to make different provision for different cases or areas; 15
- (c) to make incidental, supplementary, consequential or transitional provision or savings.
- (2) Any power to make regulations or an order under this Act, other than an order under section 35 or 36, is exercisable by statutory instrument.
- (3) The Secretary of State may not make a statutory instrument containing regulations under section 9 or 38 unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament. 20
- (4) A statutory instrument containing—
- (a) any regulations made by the Secretary of State under this Act to which subsection (3) does not apply, or 25
- (b) an order made by the Secretary of State under section 52(2),
- is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Subsection (4) does not apply to regulations made by the Secretary of State jointly with the Assembly under section 36(7). 30

### 54 Commencement

- (1) Part 1 comes into force on the day on which this Act is passed.
- (2) Part 2 comes into force in accordance with provision made by order by the Secretary of State.
- (3) Part 3 comes into force in accordance with provision made by order by the Assembly. 35
- (4) Part 4 comes into force in accordance with provision made by order by the Assembly with the consent of the Secretary of State.
- (5) In Part 5—
- (a) section 37 so far as relating to England comes into force in accordance with provision made by order by the Secretary of State, and so far as relating to Wales in accordance with provision made by order by the Assembly; 40

- 
- (b) sections 38 to 40 come into force at the end of the period of two months beginning with the day on which this Act is passed;
  - (c) sections 41 to 48 so far as relating to England come into force in accordance with provision made by order by the Secretary of State, and so far as relating to Wales in accordance with provision made by order by the Assembly; 5
  - (d) section 49 comes into force at the end of the period of two months beginning with the day on which this Act is passed;
  - (e) section 50 comes into force on the day on which this Act is passed;
  - (f) section 51 comes into force in accordance with provision made by order by the Secretary of State. 10
- (6) This Part comes into force on the day on which this Act is passed.

## 55 Extent

- (1) Part 1 extends to the whole of the United Kingdom (unless otherwise specifically provided). 15
- (2) Parts 2 to 5 extend to England and Wales only.
- (3) This Part extends to the whole of the United Kingdom.

## 56 Short title

- (1) This Act may be cited as the Children Act 2004.
- (2) **Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge.** 20

## SCHEDULES

## SCHEDULE 1

Section 1

## CHILDREN’S COMMISSIONER

*Status*

- |   |  |   |
|---|--|---|
| 1 | (1) The Children’s Commissioner is to be a corporation sole.   | 5 |
|   | (2) The Children’s Commissioner is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and his property is not to be regarded as property of, or property held on behalf of, the Crown. |   |

*General powers*

10

- |   |   |    |
|---|---|----|
| 2 | (1) The Children’s Commissioner may do anything which appears to him to be necessary or expedient for the purpose of, or in connection with, the exercise of his functions. |    |
|   | (2) In particular he may –  |    |
|   | (a) co-operate with other public authorities in the United Kingdom;   | 15 |
|   | (b) enter into contracts; and   |    |
|   | (c) acquire, hold and dispose of any property.  |    |

*Appointment and tenure of office*

- |   |   |    |
|---|---|----|
| 3 | (1) The Children’s Commissioner is to be appointed by the Secretary of State.   |    |
|   | (2) Subject to the provisions of this paragraph, a person shall hold and vacate office as the Children’s Commissioner in accordance with the terms and conditions of his appointment as determined by the Secretary of State. | 20 |
|   | (3) An appointment as the Children’s Commissioner shall be for a term not exceeding five years.   |    |
|   | (4) A person who has held office as the Children’s Commissioner is eligible for reappointment once only.  | 25 |
|   | (5) The Children’s Commissioner may at any time resign by notice in writing to the Secretary of State.  |    |
|   | (6) The Secretary of State may remove the Children’s Commissioner from office if he is satisfied that he has –  | 30 |
|   | (a) become unfit or unable properly to discharge his functions; or  |    |
|   | (b) behaved in a way that is not compatible with his continuing in office.  |    |

*Remuneration*

- |   |                               |  |
|---|-------------------------------|--|
| 4 | The Secretary of State must – |  |
|---|-------------------------------|--|

- (a) pay the Children’s Commissioner such remuneration and allowances, and
  - (b) pay or make provision for the payment of such pension or gratuities to or in respect of him,
- as may be provided under the terms of his appointment. 5

*Staff*

- 5 (1) The Children’s Commissioner may appoint any staff he considers necessary for assisting him in the exercise of his functions, one of whom shall be appointed as deputy Children’s Commissioner.
- (2) During any vacancy in the office of Children’s Commissioner or at any time when the Children’s Commissioner is for any reason unable to act, the deputy Children’s Commissioner shall exercise his functions (and any property or rights vested in the Children’s Commissioner may accordingly be dealt with by the deputy Children’s Commissioner as if vested in him). 10
- (3) Without prejudice to sub-paragraph (2), any member of the Children’s Commissioner’s staff may, so far as authorised by him, exercise any of his functions. 15

*Pensions*

- 6 (1) In the Superannuation Act 1972 (c. 11), in Schedule 1 (kinds of employment etc to which section 1 of that Act applies) – 20
- (a) in the list of “Other Bodies”, at the end insert “Employment by the Children’s Commissioner”;
  - (b) in the list of “Offices”, at the appropriate place insert “Children’s Commissioner”.
- (2) The Secretary of State must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as he may determine in respect of any increase attributable to sub-paragraph (1) in the sums payable out of money provided by Parliament under the Superannuation Act 1972. 25

*Funding*

- 7 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. 30

*Accounts*

- 8 (1) The Children’s Commissioner must – 35
- (a) keep proper accounting records;
  - (b) prepare a statement of accounts for each financial year; and
  - (c) send a copy of each such statement of accounts to the Secretary of State and the Comptroller and Auditor General as soon as possible after the end of the financial year to which the statement relates.
- (2) The Comptroller and Auditor General must examine, certify and report on each statement of accounts sent to him under sub-paragraph (1)(c) and must lay copies of the statement and of his report before Parliament. 40
- (3) In this paragraph, “financial year” means –

- (a) the period beginning with the date on which the first Children’s Commissioner is appointed and ending with 31st March next following that date; and
- (b) each successive period of twelve months ending with 31st March.

*Evidence* 5

- 9 (1) A document purporting to be duly executed under the seal of the Children’s Commissioner or to be signed by him or on his behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.
- (2) This paragraph does not extend to Scotland. 10

*Protection from defamation actions*

- 10 For the purposes of the law of defamation –
- (a) any statement made by the Children’s Commissioner in a report published under this Part has absolute privilege; and
  - (b) any other statement made by the Children’s Commissioner or a member of his staff for the purposes of this Part has qualified privilege. 15

*Regulated position*

- 11 In the Criminal Justice and Court Services Act 2000 (c. 43), in section 36(6) (meaning of “regulated position”), after paragraph (f) insert –
- “(fa) Children’s Commissioner and deputy Children’s Commissioner appointed under Part 1 of the Children Act 2004,”.
- 20

*Disqualifications*

- 12 In the House of Commons Disqualification Act 1975 (c. 24), in Part 3 of Schedule 1 (certain disqualifying offices), at the appropriate places insert the following entries –
- “Children’s Commissioner”;
- “Member of staff of the Children’s Commissioner”.
- 13 In the Northern Ireland Assembly Disqualification Act 1975 (c. 25), in Part 3 of Schedule 1 (certain disqualifying offices), at the appropriate places insert the following entries –
- “Children’s Commissioner”;
- “Member of staff of the Children’s Commissioner”.
- 25
- 30

SCHEDULE 2

Section 14 35

DIRECTOR OF CHILDREN’S SERVICES: CONSEQUENTIAL AMENDMENTS

*Children and Young Persons Act 1933 (c. 12)*

- 1 In section 96 of the Children and Young Persons Act 1933 (provisions as to local authorities), in subsection (8), for “or the chief education officer of the

authority” substitute “of the authority, the director of children’s services (in the case of an authority in England) or the chief education officer (in the case of an authority in Wales)”.

*Local Authority Social Services Act 1970 (c. 42)*

- 2 (1) The Local Authority Social Services Act 1970 is amended as follows. 5
- (2) In section 6 (director of social services) –
- (a) before subsection (1) insert –
- “(A1) A local authority in England shall appoint an officer, to be known as the director of adult social services, for the purposes of their social services functions, other than those for which the authority’s director of children’s services is responsible under section 14 of the Children Act 2004.”; 10
- (b) in subsection (1), after “local authority” insert “in Wales”;
- (c) in subsection (2), after “director of”, in both places, insert “adult social services or (as the case may be)”;
- (d) in subsection (6), for “a director of social services” substitute “a person under this section”. 15
- (3) In Schedule 1, in the entry for “Sections 6 and 7B of this Act”, after the words “Appointment of” insert “director of adult social services or”. 20

*Local Government and Housing Act 1989 (c. 42)* 20

- 3 In section 2 of the Local Government and Housing Act 1989 (politically restricted posts), in subsection (6) –
- (a) after “means –” insert –
- “(za) the director of children’s services appointed under section 14 of the Children Act 2004 and the director of adult social services appointed under section 6(A1) of the Local Authority Social Services Act 1970 (in the case of a local authority in England);”;
- (b) in paragraph (a), at the end insert “(in the case of a local authority in Wales)”;
- (c) in paragraph (c) after “director of social services” insert “(in the case of a local authority in Wales)”. 30

*Education Act 1996 (c. 56)*

- 4 (1) The Education Act 1996 is amended as follows.
- (2) In section 532 (appointment of chief education officer), for “A local authority’s duties” substitute “The duties of a local education authority in Wales”. 35
- (3) In section 566 (evidence: documents), in subsection (1)(a), for “chief education officer of that authority” substitute “director of children’s services (in the case of an authority in England) or the chief education officer (in the case of an authority in Wales)”. 40

*Crime and Disorder Act 1998 (c. 37)*

- 5 (1) The Crime and Disorder Act 1998 is amended as follows.

(2)	In section 8 (responsible officers in relation to parenting orders), in subsection (8)(bb), after “nominated by” insert “a person appointed as director of children’s services under section 14 of the Children Act 2004 or by”.	
(3)	In section 39 (youth offending teams), in subsection (5) –	5
(a)	after paragraph (a) insert –	
“(aa)	where the local authority is in England, a person with experience of social work in relation to children nominated by the director of children’s services appointed by the local authority under section 14 of the Children Act 2004;”;	10
(b)	in paragraph (b) for “a social worker of a” substitute “where the local authority is in Wales, a social worker of the”;	
(c)	after paragraph (d) insert –	
“(da)	where the local authority is in England, a person with experience in education nominated by the director of children’s services appointed by the local authority under section 14 of the Children Act 2004;”;	15
(d)	in paragraph (e) insert at the beginning “where the local authority is in Wales,”.	20
 <i>Protection of Children Act 1999 (c. 14)</i>		
6	In section 4C of the Protection of Children Act 1999 (restoration to the list) in subsection (1), for “director of social services of a local authority” substitute “director of children’s services of a local authority in England or a director of social services of a local authority in Wales”.	25
 <i>Criminal Justice and Court Services Act 2000 (c. 43)</i>		
7	(1) The Criminal Justice and Court Services Act 2000 is amended as follows.	
(2)	In section 34 (restoration of disqualification order), in subsection (1), for “a director of social services of a local authority” substitute “a director of children’s services of a local authority in England or a director of social services of a local authority in Wales”.	30
(3)	In section 36 (meaning of “regulated position”), in subsection (6) –	
(a)	after paragraph (b) insert –	
“(ba)	director of children’s services and director of adult social services of a local authority in England,”;	35
(b)	in paragraph (c) at the end insert “in Wales”;	
(c)	in paragraph (d) at the end insert “in Wales”.	
 <i>Criminal Justice Act 2003 (c. 44)</i>		
8	In section 322 of the Criminal Justice Act 2003 (individual support orders), in the new section 1AA to be inserted in the Crime and Disorder Act 1998 (c. 37), in subsection (10)(b), after “nominated by” insert “a person appointed as director of children’s services under section 14 of the Children Act 2004 or by”.	40

SCHEDULE 3

Section 34

ADVISORY AND SUPPORT SERVICES FOR FAMILY PROCEEDINGS

*Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22)*

- 1 In section 26 of the Domestic Proceedings and Magistrates' Courts Act 1978 (reconciliation), in subsection (2), after “Criminal Justice and Court Services Act 2000)” insert “, a Welsh family proceedings officer (within the meaning given by section 29 of the Children Act 2004)”. 5

*Child Abduction and Custody Act 1985 (c. 60)*

- 2 The Child Abduction and Custody Act 1985 is amended as follows.
- 3 In sections 6(a) and 21(a) (reports), after “an officer of the Service” insert “or a Welsh family proceedings officer”. 10
- 4 In section 27 (interpretation), after subsection (5) insert –  
“(5A) In this Act “Welsh family proceedings officer” has the meaning given by section 29 of the Children Act 2004”.

*Children Act 1989 (c. 41)* 15

- 5 The Children Act 1989 is amended as follows.
- 6 In section 7 (welfare reports), in subsections (1)(a) and (b) and (5), after “an officer of the Service” insert “or a Welsh family proceedings officer”.
- 7 In section 16 (family assistance orders), in subsection (1), after “an officer of the Service” insert “or a Welsh family proceedings officer”. 20
- 8 (1) Section 26 (review of cases etc) is amended as follows.  
(2) In subsection (2A)(c) after “Service” insert “or a Welsh family proceedings officer”.  
(3) After subsection (2C) insert –  
“(2D) The power to make regulations in subsection (2C) is exercisable in relation to functions of Welsh family proceedings officers only with the consent of the National Assembly for Wales.” 25
- 9 (1) Section 41 (representation of child) is amended as follows.  
(2) In subsection (1), after “an officer of the Service” insert “or a Welsh family proceedings officer”. 30  
(3) In subsections (2) and (4)(a), after “officer of the Service” insert “or Welsh family proceedings officer”.  
(4) In subsection (10) –  
(a) in paragraphs (a) and (b), after “officer of the Service” insert “or Welsh family proceedings officer”; 35  
(b) in paragraph (c), after “officers of the Service” insert “or Welsh family proceedings officers”.  
(5) In subsection (11), after “an officer of the Service” insert “or a Welsh family proceedings officer”.

10 In section 42 (rights of officers of the Service), in subsections (1) and (2), after “an officer of the Service” insert “or Welsh family proceedings officer”.

11 In section 105(1) (interpretation), at the end insert –

““Welsh family proceedings officer” has the meaning given by section 29 of the Children Act 2004.”

5

*Criminal Justice and Court Services Act 2000 (c. 43)*

12 The Criminal Justice and Court Services Act 2000 is amended as follows.

13 In section 12 (principal functions of CAFCASS), in subsection (1), after “the welfare of children” insert “other than children ordinarily resident in Wales”.

10

14 In paragraph 1 of Schedule 2 (members of CAFCASS), for “ten” substitute “nine”.

*Adoption and Children Act 2002 (c. 38)*

15 The Adoption and Children Act 2002 is amended as follows.

16 (1) Section 102 (officers of the Service) is amended as follows.

15

(2) In subsection (1), at the end insert “or a Welsh family proceedings officer”.

(3) In subsection (7), after “officer of the Service” insert “or a Welsh family proceedings officer”.

(4) After that subsection insert –

“(8) In this section and section 103 “Welsh family proceedings officer” has the meaning given by section 29 of the Children Act 2004.”

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17 In section 103 (rights of officers of the Service), in subsections (1) and (2), after “officer of the Service” insert “or a Welsh family proceedings officer”.

*Sexual Offences Act 2003 (c. 42)*

18 In section 21 of the Sexual Offences Act 2003 (positions of trust), in subsection (12)(a), after “officer of the Service” insert “or Welsh family proceedings officer (within the meaning given by section 29 of the Children Act 2004)”.

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SCHEDULE 4

Section 41

CHILD MINDING AND DAY CARE

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1 Part 10A of the Children Act 1989 (c. 41) is amended as follows.

**Amendments relating to child minding and day care**

*Conditions imposed by justice of the peace or tribunal*

2 (1) In section 79B(3)(d) and (4)(d), for “by the registration authority” substitute “under this Part”.

35

- (2) In section 79G(2), omit “under section 79F(3)”.

*Application fees*

- 3 (1) In section 79E(2), at the end insert –  
“ (c) be accompanied by the prescribed fee.”  
(2) In section 79F(1) and (2) – 5  
(a) after “on an application” insert “under section 79E”;  
(b) omit paragraph (b) and the preceding “and”.

*Fees payable by registered persons*

- 4 (1) In section 79G(1), for “an annual fee” substitute “a fee”.  
(2) In Schedule 9A – 10  
(a) in the heading before paragraph 7, omit “Annual”;  
(b) in paragraph 7, for the words from “at prescribed times” to the end  
substitute “, at or by the prescribed times, fees of the prescribed  
amounts in respect of the discharge by the registration authority of  
its functions under Part XA.” 15

*Waiver of disqualification*

- 5 In Schedule 9A, in paragraph 4(3A) –  
(a) after “disqualified for registration” insert “(and may in particular  
provide for a person not to be disqualified for registration for the  
purposes of sub-paragraphs (4) and (5))”;  
(b) in paragraph (b), omit “to his registration”. 20

**Amendments relating to day care only**

*Qualification for registration*

- 6 In section 79B(4) –  
(a) for paragraphs (a) and (b) substitute – 25  
“(a) he has made adequate arrangements to ensure that –  
(i) every person (other than himself and the  
responsible individual) looking after children  
on the premises is suitable to look after  
children under the age of eight; and 30  
(ii) every person (other than himself and the  
responsible individual) living or working on  
the premises is suitable to be in regular  
contact with children under the age of eight;  
(b) the responsible individual – 35  
(i) is suitable to look after children under the age  
of eight, or  
(ii) if he is not looking after such children, is  
suitable to be in regular contact with them;”;  
(b) in subsection (5), for “(4)(b)” substitute “(4)(a)”; 40

(c) after subsection (5) insert –

“(5ZA) For the purposes of subsection (4), “the responsible individual” means –

- (a) in a case of one individual working on the premises in the provision of day care, that person;
- (b) in a case of two or more individuals so working, the individual so working who is in charge.”

5

*Prohibition in respect of disqualified persons*

7 In Schedule 9A, in paragraph 4(4) –

- (a) after “or be” insert “directly”;
- (b) omit “, or have any financial interest in”.

10

*Unincorporated associations*

8 In Schedule 9A, after paragraph 5 insert –

*“Provision of day care: unincorporated associations*

5A (1) References in Part XA to a person, so far as relating to the provision of day care, include an unincorporated association.

15

(2) Proceedings for an offence under Part XA which is alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members).

20

(3) For the purpose of any such proceedings, rules of court relating to the service of documents are to have effect as if the association were a body corporate.

(4) In proceedings for an offence under Part XA brought against an unincorporated association, section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates’ Courts Act 1980 (procedure) apply as they do in relation to a body corporate.

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(5) A fine imposed on an unincorporated association on its conviction of an offence under Part XA is to be paid out of the funds of the association.

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(6) If an offence under Part XA committed by an unincorporated association is shown –

(a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or

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(b) to be attributable to any neglect on the part of such an officer or member,

the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.”

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# Children Bill [HL]

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## B I L L

To make provision for the establishment of a Children's Commissioner; to make provision about services provided to and for children and young people by local authorities and other persons; to make provision in relation to Wales about advisory and support services relating to family proceedings; to make provision about private fostering, child minding and day care, adoption review panels, the defence of reasonable punishment, the making of grants as respects children and families and about child safety orders.

*Brought from the Lords 19th July 2004.*

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*Ordered, by The House of Commons,  
to be Printed, 19th July 2004.*

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