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Joint Committee on the Draft Children (Contact) and Adoption Bill

Session 2004—05

Draft Children (Contact) and Adoption Bill

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Joint Committee on the Draft Children (Contact) and Adoption Bill

The Joint Committee was appointed to consider and report on the Draft Children (Contact) and Adoption Bill published by the Department for Education and Skills on 2nd February 2004 (Cm 6462). The Committee was appointed on 9 February 2005.

Membership

The Members of the Committee were:

Vera Baird	Earl of Dundee
Virginia Bottomley	Baroness Gould of Potternewton
David Chidgey	Baroness Hooper
Ann Coffey	Baroness Howarth of Breckland
Jonathan Shaw	Baroness Massey of Darwen (until 2 March)
Clive Soley (Chairman)	Baroness Morgan of Drefelin (from 2 March)
	Baroness Nicholson of Winterbourne

General Information

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Contacts for Joint Committee on the Draft Children (Contact) and Adoption Bill

All correspondence should be addressed to the Clerk, Joint Committee on the Draft Children (Contact) and Adoption Bill, Committee Office, House of Lords, London SW1A 0PW.
The telephone number for general enquiries is 020 7219 8675.
The Committee's email address is ccabill@parliament.uk

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The Report of the Committee is published in Volume I, HC 400-I, HL Paper No.100-I.
The Evidence of the Committee is published in Volume II, HC 400-II, HL Paper No. 100-II.

References in the text of the Report are as follows:

(Q) refers to a question in oral evidence (Volume II, HC 400-II, HL Paper No. 100-II)
(Ev) refers to a page of evidence (Volume II, HC 400-II, HL Paper No. 100-II)

Draft Children (Contact) and Adoption Bill

CHAPTER 1: INTRODUCTION

Overview

1. The Draft Children (Contact) and Adoption Bill was presented to Parliament on 2 February 2005 by the Secretary of State for Education and Skills.[1]

2. After an exchange of messages between the two Houses of Parliament, this Joint Committee on the draft Bill was appointed and directed to meet for the first time on Wednesday 9 February. Our terms of reference were:

   "... to consider and report on any draft Children (Contact) and Adoption Bill presented to both Houses by a Minister of the Crown, and report on the draft Bill by 26th May 2005."

3. At our first meeting we decided that, in view of the widely anticipated General Election which was likely to involve dissolution of Parliament some time before 26 May, we would endeavour to complete our work by Easter. This involved a much-compressed timetable, but we believed that it would be preferable to adopt this rather than risk failing to make any report.

4. Accordingly, we held public evidence sessions on the mornings and afternoons of only two days: 24 February and 3 March. At these meetings, we heard evidence from: the Family Law Bar Association and Resolution (formerly the Solicitors Family Law association);[2] the President of the Family Division of the High Court and another judge of the Court;[3] the Children and Family Court Advisory and Support Service (CAFCASS);[4] the Welcare Accord Centre, the National Association of Child Contact Centres, Relate and the United Kingdom College of Family Mediators;[5] Families Need Fathers, the Grandparents' Association and Both Parents Forever;[6] the Association of District Judges;[7] the NSPCC and Women's Aid;[8] and the Minister for Children and Parliamentary Under-Secretary of State from the Department for Education and Skills.[9] We are grateful to all our witnesses for appearing before us at rather short notice.

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1 Cm 6462

2 QQ 1–51

3 QQ 52–110

4 QQ 111–145

5 QQ 146–175

6 QQ 176–235

7 QQ 236–289

8 QQ 290–324

9 QQ 325–364

5. We also issued a press notice calling for written evidence.[10] Again, we had to set a tight deadline for these submissions of the end of the first week in March, but we received over 60 submissions from a wide range of organisations and individuals. Many are printed in the separate volume of evidence. We are grateful to all those who took the time to write to us with their views.

6. We appointed two specialist advisers to assist us in our inquiry: Professor Gwynn Davis of the University of Bristol and Mr Andrew McFarlane QC of 1 King's Bench Walk Chambers. Both had previously advised the House of Commons Constitutional Affairs Committee on its inquiry, which we describe below. We are indebted to our advisers for their assistance in this brief but intensive inquiry.

7. The draft Bill is short, comprising only eight substantive clauses and two Schedules. It divides into two entirely distinct parts, the first dealing with measures relating to child contact orders, and the second with the power of the Secretary of State to impose restrictions on adoptions from specific countries.

8. In relation to the first part, we have been mindful of the report of the Commons Constitutional Affairs Committee, published on 23 February 2005, which deals with the operation of the family courts more widely.[11] We have not sought in this Report to go over the same ground as that Committee: their Report provides an essential background to our own recommendations and deals with much of the wider context in which the proposed provisions of the draft Bill must be considered. In the time available, we have focussed exclusively on the provisions of the draft Bill, particularly their workability, their likely effectiveness, and their proportionality to the problem they seek to address. In this context, we have also considered whether the draft Bill fails to include any provisions which might have been useful in advancing its aims.

9. Part 1 of the draft Bill makes provision with respect to the enforcement by the family courts of orders requiring a "resident parent" to co-operate with a "non-resident parent" in allowing contact between a child and the non-resident parent after divorce or separation.

10. This issue has been increasingly prominent in the media and in political debate in recent months and years. As the Secretary of State's Foreword to the draft Bill points out, around a quarter of the 12 million children in the United Kingdom have parents who have separated or have never lived together. In the vast majority of cases, contact with the "non-resident parent" is maintained through informal arrangements between the parents. However, in about 10 per cent of cases, agreement between the parents over the non-resident parent's contact with a child or children cannot be achieved by negotiation, and an application is made to the family courts for an order against the resident parent specifying the contact which he or she must allow the non-resident parent to have. In 2003-04 there were 40,000 applications to court connected with contact, an estimated 7000 of which were the result of alleged breaches of contact orders.[12] At present, if a contact order is

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10 http://www.parliament.uk/documents/upload/CfEjcdccb.pdf

11 *Family Justice: the operation of the family courts*, Fourth Report from the House of Commons Constitutional Affairs Committee, Session 2004-05, HC 116-I

12 *Children's needs, parents' responsibilities: Supporting evidence for consultation paper*, DfES, July 2004, para 26

breached, the only recourse available to the courts for enforcement is a finding of contempt of court (which may be punished by a fine or imprisonment), or the transference of the child's place of residence to the other parent. The draft Bill seeks to provide other mechanisms for facilitation and enforcement of contact orders.

11. Part 2 of the draft Bill concerns arrangements for the adoption by residents of the United Kingdom of children from other countries ("inter-country adoption"), a phenomenon which has been increasing in recent years. It provides for the Secretary of State to impose special restrictions on the arrangements for such adoptions from specific countries when she considers that there are good grounds for doing so, because of concerns about issues such as human trafficking or the sale of children.

Background—Child Contact

12. Part 1 of the draft Bill is the result of a process commenced in March 2001 by the Children Act Sub-Committee (CASC) of the Lord Chancellor's Advisory Board on Family Law. CASC issued a consultation paper on arrangements for facilitating contact between a child and the non-resident parent, and the enforcement of contact orders. In its final report, *Making Contact Work*, CASC noted a general dissatisfaction with the legal process as a mechanism for resolving contact disputes. It made a wide range of recommendations, focussing on non-statutory measures to prevent most cases ever needing to reach court, as well as proposing that the courts should be given much wider statutory powers to ensure that their orders were obeyed. CASC recommended that this should include the power for judges to:

- refer a parent who disobeyed a contact order to a variety of resources;
- refer a parent to a psychiatrist or psychologist;
- refer a non-resident parent who was violent or in breach of an order to an education programme or a perpetrator programme;
- place a parent on probation with a condition of treatment or attendance at a given class or programme;
- impose a community service order, with programmes specifically designed to address the default in contact; and
- award financial compensation from one parent to another.[13]

13. In July 2004, the Government published their response in the form of a Green Paper on parental contact, entitled *Parental Separation: Children's Needs and Parents' Responsibilities*,[14] a joint publication by the Department for Constitutional Affairs, the Department for Education and Skills and the Department for Trade and Industry. In it, the Government acknowledged that "the current way in which the courts intervene in disputed contact cases does not work well".[15] Responding to CASC's recommendations about non-

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[13] *Making Contact Work: A Report to the Lord Chancellor on the facilitation of arrangements between children and their non-residential parents and the enforcement of court orders for contac*t, Children Act Sub-Committee, February 2002

[14] Cm 6273

[15] Cm 6273, Ministerial Foreword

statutory provision, they proposed improving access to existing information, advice and specialist legal advice, piloting a collaborative law approach, encouraging mediation, extending in-court conciliation services and improving case management by the courts and the following-up of court orders.

14. The Government also proposed to legislate at the earliest opportunity to provide additional enforcement powers to allow:

- referral of a defaulting parent in a contact/residence case to a variety of resources including information meetings, meetings with a counsellor, or parenting programmes/classes designed to deal with contact disputes;
- referral of a non-resident parent who has been violent or who has breached an order to a relevant programme;
- attachment of conditions to orders which could require attendance at a given class or programme;
- imposition of community-based orders, with programmes specifically designed to address the default in contact;
- the award of financial compensation from one parent to another (for example where the cost of a holiday has been lost).

15. Following consultation on the Green Paper, in January 2005 the Government published *Parental Separation: Children's Needs and Parents' Responsibilities – Next Steps*,[16] a summary of public responses to the Green Paper and an agenda for action. Amongst the "next steps" identified in the report was the publication, for pre-legislative scrutiny, of a draft Bill outlining plans to introduce new measures for enforcement of contact orders.

16. Part 1 of the draft Bill seeks to insert a number of new provisions into the Children Act 1989. The 1989 Act establishes the procedure for a court to make a contact order. A contact order is defined as "an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other".[17] At present, the court can enforce contact orders only by imposing sanctions for contempt of court, either through fines or imprisonment, or transferring residence to the other parent.

17. It is important to note that the draft Bill is intended to form just one part of the Government's proposals to support parents and children in cases of parental separation. Around 90 percent of parents are able to solve any differences without recourse to the courts. The Government's non-statutory proposals, as set out in their January 2005 *Parental Separation* White Paper, may succeed in increasing this percentage. The draft Bill is intended to apply to the minority who do require court intervention. **We agree with the Commons Constitutional Affairs Committee that the courts are usually not the best place to resolve complex family disputes, and we agree with the general thrust of policy to utilise alternative resolution mechanisms, particularly mediation. Nevertheless, there will**

16 Cm 6452

17 Section 8

inevitably be some cases which do require the involvement of the courts, and these are likely to be the most difficult to resolve.

Background—Adoption

18. The draft Bill's provisions on adoption are not connected with the Government's Parental Separation proposals. Until about 10 years ago, adoption of children from other countries by residents of the United Kingdom was rare. However, over the past five years, around 300 such adoptions have taken place annually. Prospective inter-country adopters in England and Wales go through the same assessment and approval procedure as someone applying to adopt domestically, although the process is often more expensive and time-consuming.

19. In June 2003, the United Kingdom ratified the Hague Convention on Protection of Children and Co-operation in respect of Inter-Country Adoption. The 1993 Convention aims to:

- establish safeguards to ensure that inter-country adoptions only take place after the best interests of the child have been properly assessed and in circumstances which protect his or her fundamental rights;
- establish a system of co-operation amongst Contracting States to ensure that these safeguards are respected; and
- secure the recognition in Contracting States of adoptions made in accordance with the Convention.

20. The Adoption (Intercountry Aspects) Act 1999 enables the Secretary of State to make regulations giving effect to the 1993 Convention under United Kingdom law. Further provisions relating to inter-country adoption are contained in the Adoption and Children Act 2002.

21. On 22 June 2004 the Government announced that it was imposing a temporary suspension of adoptions of Cambodian children by United Kingdom residents, in response to concerns about the Cambodian adoption process. There is no explicit statutory power for this, and the decision is currently awaiting judicial review. The application is expected to be heard in April 2005. [18]

The Draft Bill

22. The draft Bill applies to England and Wales only.

23. **Clause 1** of the draft Bill would insert new sections into the Children Act 1989, which would allow the courts to direct a person, who is party to family proceedings relating to the making or altering of a contact order and where the making of that order is opposed, to attend a contact activity. A contact activity is defined as an information session, a programme, class, counselling or guidance session or any other activity which can assist a person to establish, maintain or improve contact with a child. The clause provides that a contact activity must be appropriate, with a suitable provider, situated within reasonable travelling distance and should not interfere with work or study or conflict with religious beliefs. The court could ask a CAFCASS or

18 *R (Charlton Thomson and others)* v *Minister of State for Children*

Welsh family proceedings officer to monitor a person's compliance and report back to the courts.

24. **Clause 2** would amend the 1989 Act to provide that a court can ask a CAFCASS or Welsh family proceedings officer to facilitate compliance with a contact order, monitor whether compliance has occurred and report to the court on compliance.

25. **Clause 3** would amend the 1989 Act to allow a court to make an enforcement order where it is satisfied that a contact order has been breached without reasonable excuse. An enforcement order could impose an unpaid work or curfew requirement. In the case of a curfew requirement the Government are considering whether to give the court the power to impose a "compliance monitoring requirement", which could mean electronic tagging to monitor compliance with the curfew. When making an enforcement order, a court would have to take into account the welfare of the child concerned. Before making an enforcement order, a court would have to be satisfied that it was necessary to secure compliance with the contact order; and that its likely effect was proportionate to the seriousness of the breach of the contact order. A CAFCASS or Welsh family proceedings officer could provide information on such matters to the court and monitor compliance.

26. **Clause 4** would amend the 1989 Act to allow the court to require a parent who has caused financial loss to another parent by breaching a contact order to pay compensation not exceeding the amount of the loss. The court would be required to take into account the welfare of the child concerned and the financial circumstances of the person breaching the order.

27. **Clause 5** makes transitional provisions.

28. **Clause 6** of the draft Bill would allow the Secretary of State to declare that special restrictions will apply to a country in relation to bringing children into the United Kingdom for adoption. The Secretary of State would have to have reason to believe that, because of practices of a country in connection with the adoption of children, it would be contrary to public policy to bring children from that country into the United Kingdom. The Secretary of State would be required to consult the National Assembly for Wales before declaring a restriction.

29. **Clause 7** requires that special restrictions applicable to a restricted country would have to be set out in regulations. The regulations would require the Secretary of State not to take any steps which he or she might otherwise have taken in connection with bringing a child into the United Kingdom, but any such regulations would also have to make provision for adoptions in exceptional circumstances to proceed.

30. **Clause 8** would allow the Secretary of State to impose extra steps to be taken in relation to a restricted country in certain circumstances.

31. **Clause 9** gives effect to minor and consequential amendments to the Children Act 1989 and the Adoption and Children Act 2002. Details of the amendments are set out in Schedule 2 to the draft Bill.

32. **Clause 10** makes provision about the Secretary of State's powers to make regulations.

33. **Clause 11** sets out the short title, commencement and territorial extent of the Bill.

CHAPTER 2: CONTACT ACTIVITIES (CLAUSE 1)

34. Clause 1 of the draft Bill would insert new sections 11A to 11E into the Children Act 1989. These would allow a court to require a person who is a party to contact order proceedings to undertake a "contact activity". The court could exercise this power either when making, varying or discharging an order (by imposing a contact activity condition under new section 11B), or when considering doing so (by making a contact activity direction under new section 11A). In considering whether to order a contact activity, the welfare of the child would be the court's paramount consideration. A contact activity is defined in the draft Bill as:

- an information session organised in order to provide information or advice regarding arrangements for, or other matters relating to, contact with children; or
- a programme, class, counselling or guidance session or other activity devised for the purpose of assisting a person to establish, maintain or improve contact with a child, or which may be used for such a purpose.[19]

The nature of problems over contact

35. The Commons Constitutional Affairs Committee concluded its report with the observation that "The system at present is focused on the resolution of disputes between adults: the interests of children should be paramount".[20] We agree with this and, before we consider the proposed contact activities in detail, we make a more general point. We are concerned that the provisions of the draft Bill do little to challenge the 'adult to adult' character of this litigation. They also, we believe, reflect one particular view of the nature of problems over contact (essentially, that these reflect intransigence on the part of the resident parent). We strongly suspect that the problems faced by families where one parent applies to the court are considerably more complex than this, and not easily resolved by means of one-off enforcement measures.

36. Recent research at the University of East Anglia provides a valuable insight into the nature of the problems faced by these families, and also the problems which they present to the court.[21] The parents were (disproportionately compared with other separating couples) young, on low incomes, with very young children. The parents' ability to communicate with one another was limited and the relationships were characterised by a lack of trust, empathy, or flexibility, with high levels of anger. In many of these families there had been violence in the home. Quite commonly, there were child protection concerns. The disputes presented to the court did not reflect straightforward arguments about 'contact'; they reflected a range of issues, including commitment to the child, reliability, parenting quality, the child's reaction to contact, and perceived attempts to bully or control. In short, these families experienced problems on a different scale from those experienced by the majority of separating parents, including multiple risk factors associated with

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19 New section 11E

20 Para 155

21 *A Profile of Appplicants and Respondents in Contact Cases in Essex*, Liz Trinder et al, University of East Anglia, DCA Research Series 1/05, January 2005

poor outcomes for children. Typically, also, the court was presented with competing 'his' and 'hers' accounts.

37. It seems to us plausible, given this insight, that many of these families need support and a facilitative approach to problem-solving, sustained over time. We recognise that there are provisions in the draft Bill which might enable this to happen, and we commend the Government's attempt to offer something constructive to these families through the court process.

38. There is also a substantial body of cases (most of which do not involve an application to the court) in which the non-resident parent either withdraws from the children's lives or undermines the prospect of a continuing relationship with them through his or her inconsistent or unreliable behaviour. We recognise that it is difficult for the court to intervene effectively unless parents apply for a contact order, but we see no reason why an application should not be permitted in circumstances where the resident parent is claiming that the other parent is failing to discharge his or her responsibilities to the children. At present the courts have no jurisdiction to receive an application couched in these terms. **We therefore invite the Government to give consideration to permitting either parent to apply to the court where contact has broken down or is not proceeding satisfactorily. This would enable resident parents to apply to the court in circumstances where, in their view, the non-resident parent was failing to discharge his or her responsibilities to the children. It would then be open to the court to impose a contact activity upon that parent.**

Power to make a contact activity direction

39. A limitation of a more technical nature was identified by witnesses to the Committee. The Family Law Bar Association (FLBA) drew attention to the fact that new section 11A(1)(b) would permit the court to make a contact activity direction only in cases where the making of a contact order was opposed. Philip Moor QC from the FLBA told us:

"I was slightly troubled about that, because quite a few resident parents come to court and say, 'Oh, I'm not opposing the order,' but you know there are going to be difficulties, and I would have thought it would have been easier if it just said: 'This section applies in any family proceedings where the court is considering [making] an order falling within subsection (2)' so that there cannot be a technical defence to get you outside that section."[22]

40. We agree with the FLBA that problems may arise even in cases where the order is not formally opposed, and that the ordering of a contact activity might be of use in such circumstances. **We recommend that the court should have the power to make a contact activity direction whether or not the application for contact is opposed.**

What should "contact activities" include?

41. The terms used to define a contact activity in the draft Bill are very broad. During the Committee's inquiry it became apparent that there was some confusion about what the term "contact activity" would encompass. One witness commented: "I do not think it is quite clear in the Bill what contact

22 Q 1. See also Q 257

activity is".[23] Some questioned whether it would include support groups, or telephone-based support services, or therapy sessions for parents to overcome their own difficulties.[24] Others queried whether "other activity" could include mediation although, as we discuss below, this is currently excluded from the definition (paragraphs 53 to 59).

42. Some witnesses proposed that contact activities should encompass activities designed to reduce the risk of harm to children and parents during contact, including an independent assessment of risk of harm to the child, anger management classes and "perpetrator programmes", where these are available.[25] Refuge told the Committee that:

"The primary educative and remedial need for domestic violence perpetrators is to address their abusive behaviour rather than their parenting skill. Refuge would strongly recommend making attendance at a perpetrators' programme or series of individual meetings where the impacts of violence/abuse upon children are discussed, a precondition of contact. Refuge would also urge the courts to exercise caution regarding the degree of 'change' expected from attendance at such programmes."[26]

43. Women's Aid drew attention to potential difficulties arising from the family court making directions to that effect and the problem of linking existing programmes together:

"What we are for is safe contact but that risk has to be managed. That means having available a range of facilities. The problem with anger management is that it is not a way of addressing abusive behaviour in a violent relationship. You have to have proper perpetrator programmes, a policy which the government is pursuing through the Home Office and the probation services, which is putting in place properly accredited perpetrator programmes to a certain model. The problem at the moment is that entry to those programmes requires usually a criminal conviction of some kind to a level of assault which is unlikely, when we are talking about referral from the family justice system. There is a problem at the moment of linking from the family justice system into some of the measures that are available within the criminal justice system. That would need to be addressed."[27]

44. **We invite the Government to consider including "perpetrator programmes" (aimed at people who have been violent towards their partners) in the list of contact activity directions.** The difficulty with this, we recognise, is that referral to such programmes by the court is currently only made in the criminal justice context, and is in any event only feasible where this resource is available in the locality. This leads us to raise a more general concern about the intended relationship between contact activities and those programmes or initiatives which are currently the responsibility of the probation service. **We recommend that the Government give further thought to this relationship, and in particular that they clarify the steps that will need to be taken before**

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23 Q 149 [Mrs Tyler]. See also Ev 187, para 3; Ev 50.

24 Ev 156; Ev 55; Ev 191, section 1; Ev 50.

25 Q 303 and Q 318 [Ms Cronin]; Q 72 [Dame Elizabeth Butler-Sloss]

26 Ev 198

27 Q 307 [Ms Harwin]

the family courts can be in a position to refer parents to these statutory and voluntary-run activities.

45. We consider that prior to making a contact order the court should always have in mind the safety of the resident parent and the child, and that it should not make such an order unless it is satisfied that it is safe to do so. That principle should also apply when the court is contemplating a contact activity direction. Accordingly, **we recommend that, prior to ordering a contact activity, the Bill should require the court to consider the safety implications of making such a decision, both for the individual parents and for the child; and that the court should not require such an activity unless it is satisfied that it is safe to do so.**

46. The Committee understands why "contact activity" has been given a broad definition in the draft Bill, so as not to exclude any sessions, programmes or classes which are shown to be of use in improving the outcomes in difficult court cases. However, it is crucial that everyone involved in contact proceedings is clear about the kind of contact activities that might be ordered. Organisations considering developing such activities, many of whom will be from the voluntary sector, also require clarity as to what kinds of session, programme and class will fall within the definition. **We recommend that non-statutory guidance is made available to parents involved in contact proceedings and potential providers of contact activities, explaining in more detail what kinds of session, programme or class the courts may order under the contact activity provisions.**

Availability of contact activities

47. Before making a contact activity direction or imposing a contact activity condition, the court must satisfy itself of a number of factors, including whether the proposed contact activity is provided in the area in which the person who would be subject to the order resides, or is in a place to which he or she could reasonably be expected to travel.[28] The court may ask a CAFCASS officer or Welsh family proceedings officer to provide information on this.

48. The 2002 CASC report stressed the importance of ensuring that facilities to which parents might be referred existed on the ground.[29] A number of our witnesses echoed this view:

> "It is of crucial importance that [contact activities] are available here and now. It will not be helpful at all to be told, 'Well, we can't do anything until four weeks on Monday because we don't have the facilities, the resources, the staff'."[30]

> "It is no use the courts having the power to refer parents to activities if the activities are not available. I would like a reassurance that such facilities will be available, and what steps the government is taking to ensure that they are."[31]

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28 New section 11C(5)

29 *Making Contact Work*, para 14.54

30 Q 52 [Mrs Justice Bracewell]

31 Ev 11, para 9. See also Q 161 [Ms Sibson]; Q 307 [Ms Harwin] and Ev 183, section 3

49. As with many of the proposals in the draft Bill, the availability of funding will be essential to the success of the new contact activity provisions. A number of family groups warned that unless a "clear funding stream" was identified to support such services at a local level, the proposals would fail.[32] **We recommend that the Government review the availability across England and Wales of the sessions and programmes that might become contact activities. In the light of this review the Government should ensure that there is sufficient funding available for adequate provision across England and Wales.**

Suitability of contact activity providers

50. Before making a contact activity direction or imposing a contact activity condition, the court must satisfy itself whether the proposed provider of the contact activity is "suitable".[33] We have heard concerns about the use of the term "suitable":

> "The Bill actually refers to "suitable providers" and I think that is too vague... We would like to see that being much clearer as to what is a suitable provider."[34]

51. The Government have stated:

> "It is not intended that there should be any formally set criteria or qualifications, not least because it is important that courts should have flexibility to make use [of] as wide a range of activities and providers as is appropriate in particular cases. It will be for the courts to determine if a given provider is suitable, most likely with the advice of CAFCASS."[35]

52. We would not like to exclude any useful organisation from being utilised by the court. However, we do consider that, particularly where safety is an issue, consideration should be given to ensuring that the relevant contact activity providers have the right training, facilities and, where relevant, accreditation, required to undertake their task. **We recommend that the review of contact activity provision we propose above should also consider the setting of minimum requirements which must be met before an organisation can be considered a contact activity provider, or provide for the inspection and approval of an organisation by an appropriately qualified person.**

Mediation

53. The Government have made it clear that contact activities will not include mediation:

> "The words 'other activity' would not cover mediation because mediation is a different sort of activity to programmes, classes, counselling or guidance sessions. Anything under the heading of 'other activity' would have to be similar to those things."[36]

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32 Ev 155, para 1. See Also Ev 177 - 178 and Ev 86.

33 New section 11C(4)

34 Q 166 [Mrs Brooks]

35 Ev 119, para 1

36 Ev 116

54. The Government have argued that including in the draft Bill a provision to impose compulsory mediation would be counter-productive, or even dangerous in cases involving domestic violence which the court might not yet have considered.[37] A number of witnesses agreed that imposing mediation on parties would be unworkable.[38] The FLBA explained that:

> "To talk in terms of 'compulsory mediation' really is rather a contradiction in terms, because mediation, as we all know, is a voluntary process which both parties have to come to. It is not about forcing a solution on to the parties; it is about getting them to think about what might be the best outcome for the children for whom they have responsibility."[39]

55. However, the Constitutional Affairs Committee's report criticised the Government for failing to distinguish between two different things: a "compulsory exploratory meeting with a mediator and forcing people to mediate".[40] An introductory meeting would allow parties to discuss whether mediation would be suitable in their case but leave them with the option to refuse to take that course. The Constitutional Affairs Committee recommended:

> "Where it is safe to do so (and subject to the court's discretion), we believe that all parties should be required to attend a preliminary meeting with a mediator on the basis described in section 13(1) of the Family Law Act 1996."[41]

56. Section 13(1) of the Family Law Act 1996, which has never been brought into force, gives a court power in divorce proceedings to require each party to attend a meeting "for the purpose of enabling an explanation to be given of the facilities available to the parties for mediation in relation to disputes between them and of providing an opportunity for each party to agree to take advantage of those facilities".

57. The use of compulsory information or assessment sessions on mediation was an approach strongly advocated by a wide number of witnesses, including the United Kingdom College of Family Mediators and Dame Elizabeth Butler-Sloss.[42]

58. When we questioned the Minister for Children on the role of mediation in the draft Bill, she did not appear to rule out the use of compulsory information sessions to explain the mediation process:

> "We are putting strong signals into the system at every part we can to encourage couples to mediate. For example, in the Bill itself, whilst we are not making mediation compulsory, we are giving judges the facility to make sure that those couples go to an information meeting where they are told about mediation, so information about mediation will be compulsory. Whether or not they then engage in mediation will not be compulsory. The

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37 Ev 116

38 For example, Q58 [Dame Elizabeth Butler-Sloss]; Q 151 & 154 [Ms Bloor].

39 Q 7 [Mr Kirk]

40 *Family Justice: the operation of the family courts*, para 91

41 *Family Justice: the operation of the family courts*, para 94

42 Ev 55, para 3; Q58 [Dame Elizabeth Butler-Sloss]. See also Ev 181, section 1; Ev 155, para 4; Ev 55, para 3.

broad explanation is simply that we think mediation only works if it is voluntarily and willingly entered into by the couples."[43]

59. **We recommend that the Government include within the full Bill a provision giving the Court discretion to refer parties to a mediation service in order to explore whether this could be a viable option in their case. Exploring the prospects for mediation is not, and should not be confused with, compulsory mediation. One way to achieve this would be to bring into force section 13(1) of the Family Law Act 1996 (amended so that it applies not only to divorce cases but to all private law child disputes).**

"Family resolution" scheme

60. Following proposals in its *Parental Separation* Green Paper, the Government initiated the Family Resolutions Pilot Project (FRPP) in September 2004.[44] The scheme is being run in three pilot areas—Brighton, Sunderland and Inner London—for a period of 12 months. The Government is expected to report on the outcome of the pilot in April 2006, after which a decision will be taken about any national extension to the approach.[45] The Government stated:

"The Family Resolution Pilot Project has been developed in a way which enables it to operate within the current legal framework in this country. This means that participation is not mandatory, though there is a strong judicial expectation that parties to cases will participate. We expect that this will be quite sufficient in the vast majority of cases. The evaluation of the project will report on this."[46]

61. FRPP follows a three stage process, involving:

(1) group meetings with parents, which include observing a video and engaging in discussion;

(2) "conflict management" workshops, which the two parents attend separately; and

(3) a joint meeting with a CAFCASS officer to plan post-separation parenting.

62. Relate recommended incorporating such a resolution scheme into the full Bill:

"This pilot project is the best example of contact activity for people who are using the court process that Relate is currently involved with. We believe that, within its limited remit of providing an understanding of the impact the dispute has on a child and offering some skills to support parents to co parent effectively, it has so far proved to be an appropriate activity."[47]

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43 Q 325 [Margaret Hodge MP]

44 *Parental Separation: Children's Needs and Parent's Responsibilities*, July 2004

45 *Next Steps*, para 64

46 *Next Steps*, para 65

47 Ev 34, para 2

63. The Government informed us that elements of the FRPP might be included within the spectrum of contact activities.[48] However, they intended that FRPP would be separate to the provisions in the Bill:

> "The contact provisions in the Bill are intended to give courts access to a flexible range of options that can be used in response to the differing circumstances of individual cases, rather than to point to any particular model. However, the Pilot's two parent groupwork sessions, which focus on raising awareness of the needs of the child and learning conflict management skills, are developing a model of parenting class which we intend should be a contact activity of the type the Bill makes available to courts. Irrespective of any decision about national rollout of the Pilot, these groupwork models themselves may be useful indicators of how to meet demand at local level, following court referrals."[49]

64. Evidence to the Committee revealed very different views as to how the pilot was working. Informal feedback collected by Relate indicated that parents welcomed the "awareness and skill raising sessions" but that two sessions were not sufficient to meet their needs.[50] In contrast, Mrs Justice Bracewell, a judge sitting in the Family Division of the High Court, was of the opinion that the scheme was not being used as anticipated:

> "One of the difficulties is that some of the parents are refusing to take part because it is not compulsory and they are saying that it is not convenient for them to go to information meetings and to see videos and to have discussion groups on an evening between seven and nine and they are complaining about it and not turning up. The other problem is that we rather suspect that solicitors are giving their clients the option and saying, 'Now, do you want to go down this road? If you do, we will file the application in the Sunderland County Court. If you don't want to do it, we will file it in an adjoining area where we do not have to do this.' And we suspect there is not quite the enthusiasm among the solicitors that we had hoped for."[51]

65. The FLBA confirmed that a similar situation was evident from the pilot in Brighton. Early indications were that:

> "the scheme had been very, very slow to take off and no … 'end products' in terms of agreements had been brought in front of a court for formal endorsement despite the passage of already six months."[52]

66. The FRPP is still in its early stages. Informal feedback has been mixed. **The Government may, in the light of evaluation of the FRPP, wish to consider taking an order-making power in the full Bill to place family resolution schemes on a statutory footing, should they prove to be effective.**

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48 Ev 119, issue 4

49 Ev 122, para 1

50 Q 168 [Ms Sibson]. See also Ev 24, para 1.2

51 Q 57

52 Q 9 [Mr Kirk]. See also Ev 38; Ev 156, para 2(iii).

CHAPTER 3: FACILITATING AND MONITORING CONTACT (CLAUSE 2)

67. Clause 2 of the draft Bill would insert new section 11F into the Children Act 1989. Under new section 11F, if a court had made a contact order, or an order varying a contact order, it could ask a CAFCASS officer or a Welsh family proceedings officer to carry out a number of functions in order to facilitate and monitor contact, for a maximum period of 12 months. Section 11F(5) provides that those functions are:

    (a) facilitating compliance with the order;

    (b) monitoring whether the parties to the proceedings comply with the order;

    (c) reporting to the court on such matters relating to the parties' compliance as the court may specify in the order.

68. The court could also specify in the order that a party to the proceedings must take steps to enable the officer to comply with his functions.[53]

Role of CAFCASS

69. The Children and Family Court Advisory and Support Service (CAFCASS) was established in April 2001. Their current role includes giving advice to the court about any application made to it in family proceedings and providing information, advice and support for children and their families.

70. The central role of CAFCASS (and Welsh family proceedings officers) in the draft Bill arises from the proposal in the Government's Green Paper that CAFCASS should move towards a "more active problem solving approach".[54] Dame Elizabeth Butler-Sloss agreed that changing the role of CAFCASS was crucial to the implementation of the draft Bill:

    "If the government wants to get difficult contact cases out of the court system, one of the major agents of reform must be CAFCASS… it will be CAFCASS which works with the subject children and the family to broker agreements and address the issues which arise. CAFCASS must be permitted to play a greater role than is envisaged in the Bill."[55]

71. The *Parental Separation* Green Paper acknowledged that in order to play a more active problem solving role, CAFCASS would have to change the way it operated. The Government and CAFCASS have stated that the change could be achieved if the judiciary reduced substantially the frequency with which CAFCASS was commissioned to write reports about family cases for the courts.[56] The judiciary, however, considered that it was the level of funding that was crucial to CAFCASS fulfilling its envisaged role. Dame Elizabeth Butler-Sloss stated:

    "I find it quite extraordinary that in such a critical area as the protection of children from the damaging effects of disputes between their parents

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53 New section 11(9)

54 *Parental Separation: Children's Needs and Parent's Responsibilities*, para 73

55 Ev 10

56 Cm 6273, para 73. See also Q 119 [Baroness Pitkeathley].

CAFCASS is denied the resources which would enable it to take on the expanded role which is so necessary."[57]

72. **We examine the issue of resources in detail in Chapter 8. In this Chapter we simply note the importance of ensuring that CAFCASS is appropriately resourced and organised to take on the new roles, including the facilitation and monitoring of contact, envisaged for it under the draft Bill.**

73. Placing a greater emphasis on mediation will require CAFCASS to adopt new ways of working. While court reports will still be necessary we anticipate that they will become part of the problem-solving and mediation process.

Family Assistance Orders (FAOs)

74. Section 16 of the Children Act 1989 makes provision for Family Assistance Orders (FAOs). A court may make such an order in respect of a child requiring a local authority, CAFCASS or Welsh family proceedings officer to advise, assist and, where appropriate, befriend a person named in the order. Although generally viewed as a helpful facility, the use of FAOs has been limited.[58] Dame Elizabeth Butler-Sloss explained that there were four main difficulties with the orders and the way that they were administered:

- "The FAO lasts only for 6 months. It is unrealistic to expect that the problems which have led to the making of an FAO can be resolved within this short timeframe.
- Every party has to agree to the order being made. If one party does not agree to the order, for whatever reason, and whether or not justified, the order cannot be made.
- The FAO is generally allocated to Local Authorities, many of which do not give the orders sufficient priority, and in some cases may refuse to implement them.
- The Home Office has not allocated adequate funding to administer the scheme."[59]

75. A further limitation on the use of FAOs is imposed by the requirement in section 16(3) of the Children Act 1989 that the court must be "satisfied that the circumstances of the case are exceptional" before it can make the order.

76. The Green Paper recognised that FAOs were a "further means of facilitating contact" and that they required reform. The Green Paper stated that "it may be helpful to remove the current requirement that the orders may only be made in exceptional circumstances or for there to be more flexibility about their duration".[60] The Government proposed to "legislate, as needed, to revise the arrangements for the use of FAOs".[61]

77. The draft Bill, however, makes no mention of FAOs. Several witnesses, including the National Youth Advisory Service (NYAS), argued that it should:

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57 Ev 10

58 See, for instance, Ev 58, para 10.

59 Ev 10. See also Ev 72.

60 Cm 6273, para 81

61 Cm 6273, para 81

"We are puzzled by the lack of procedural links with other relevant pieces of legislation… it would appear that an important legislative opportunity to strengthen the statutory provisions of s.16 Children Act 1989 Family Assistance Orders to support families in conflict has been missed."[62]

78. The Committee considers that, while the focus of much of the draft Bill is on developing effective sanctions that can be employed when one or other parent flouts the court's order, genuine progress in cases involving embattled parents is likely to require sustained engagement in order to address the underlying causes of resistance and, in some instances, to educate parents in a better appreciation of their children's needs. Sanctions may on occasion be necessary, but they are not the only way of achieving behaviour change.

79. **We recommend, in respect of Family Assistance Orders, that the full Bill should:**

(i) remove the requirement for there to be 'exceptional circumstances';

(ii) remove the need to obtain the consent of all those who are to be named in the order;

(iii) permit an order to be made for up to 12 months in the first instance (in line with the facilitation and monitoring provisions of clause 2), and to be renewed for an unlimited period of time if necessary; and

(iv) require that FAOs should be operated by CAFCASS, or a Welsh family proceedings officer, which is equipped to carry out such work, and not local authorities.

62 Ev 186, section 5. See also Q182 [Mr Harris], Q78 [Mrs Justice Bracewell] and Q4 [Mr Kirk] and Ev 103, para 4.

CHAPTER 4: ENFORCEMENT ORDERS (CLAUSE 3)

Context

80. The new enforcement orders proposed in clause 3 should be seen within the context of the other reforms proposed in the *Parental Separation* White Paper. As we have noted in our introduction, the Government, CAFCASS and the courts all intend that parents should be encouraged and assisted to resolve their differences without going to court, for example where appropriate through mediation. However, in a minority of difficult cases the courts will continue to have to make contact orders setting out the appropriate contact arrangements.

81. The lack of effective enforcement measures when these contact orders are not obeyed is seen as one of the key failings in the current legal framework.[63] At present, courts only have the power to enforce contact orders through contempt of court proceedings, under which a non-compliant parent may be fined or imprisoned, or by transferring the residency of the child from one parent to the other. These measures are, for obvious reasons, rarely used.

82. The draft Bill seeks to improve the effectiveness of contact orders in various ways. Under clause 1 a court could order a parent to attend a contact activity, with the aim of promoting agreement and facilitating contact (see Chapter 2). Under clause 2 a court could require CAFCASS or a Welsh family proceedings officer to facilitate or monitor compliance with a contact order (see Chapter 3). If these measures fail, the court will be able to resort to the new enforcement powers detailed in clause 3.

83. Clause 3 would give the courts the power to make an enforcement order if a party to family proceedings has failed, without reasonable excuse, to comply with a contact order.[64] An enforcement order could impose an unpaid work requirement or a curfew requirement on a person. Where a curfew requirement was made, a court could also impose a compliance monitoring requirement (ie. electronic tagging). Before making an enforcement order, the court would have to be satisfied that the proposed enforcement order was "necessary to secure the person's compliance with the contact order". The court would also have to take into account any potential conflict with a person's work or study commitments or religious beliefs.

84. **We recommend that it be made plain on the face of the Bill that the court may not impose any of the enforcement measures available to it without first considering the scope for requiring a contact activity which might address the failure of contact arrangements in a more constructive way.**

Curfew/time and place requirement

85. Concerns were raised in a number of our written submissions about how a curfew requirement could be used to "secure compliance" with a contact order.[65] At our public meetings we discussed with witnesses whether a curfew should only be used to directly *facilitate* contact, for example by ordering the

63 *Making Contact Work*, para 14.48; *Parental Separation: Children's Needs and Parent's Responsibilities*, pp 36-7

64 New sections 11G-11H

65 Ev 163; Ev 99; Ev 202 and Ev 141.

resident parent to be at home at the time the contact was due to take place, or to stay at home and not obstruct the contact while it was taking place; or whether a curfew should also be used as a *punishment*, perhaps by ordering the non-compliant parent to stay at home at a time that they might have wished to go out.[66] **The Committee does not consider that it would be appropriate for a family court to impose a curfew upon a parent purely as a punishment. It is our view that such a requirement should only be imposed in an attempt, directly, to promote compliance with the court's original order, for example as a means of ensuring that a parent was in an agreed location at an agreed time to allow contact to take place.**

86. The Committee does not support the use of the term "curfew", given its punitive connotations. We would rather see a more facilitative provision, called a "time and place requirement", by which the court could require a parent to be at a specified place at a specified time in order to allow the contact to take place; or to stay at home for the duration of the contact, and not obstruct it. The criminal standard of proof would apply to a finding of a failure to comply with the contact order, and the finding should be formally recorded in the new court order so that it may be relied upon by the court in the event of any further breaches. The time and place requirement would in some ways be similar to the curfew requirement proposed in the draft Bill, though a specified place would not have to be the person's home. The order issued by the court would include a clear warning that breaching the requirement would lead to an enforcement order being made, which could involve unpaid work, a fine or imprisonment. Whilst the content of a "time and place requirement" might be contained within a condition or direction attached to a substantive contact order under section 11(7) of the Children Act 1989, we see this new form of order as being of a higher order than a condition or direction given that it will be made after a breach has been proved and given that the requirement will explicitly warn the parent of the consequences of any failure to comply with that which the court requires of them. Although it would involve a degree of enforcement, the time and place requirement would be designed to fill the gap between the making of a contact order and the imposition of a punishment for deliberately flouting the original order. **We recommend that the full Bill should give a court the power to make a "time and place requirement", specifying what action a parent who is in breach of a contact order must take in order to facilitate the contact envisaged in the original order; and including a warning that breach would lead swiftly to the making of an enforcement order.**

Compliance monitoring (tagging)

87. The Government are considering whether to include in the full Bill a provision allowing the courts to impose a compliance monitoring requirement (meaning electronic tagging) in cases where a curfew requirement has been imposed. The provision appears in the draft Bill in square brackets, indicating the Government's ambivalence as to whether tagging is appropriate for parents who are in breach of a contact order.

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66 See Q 29 and Q 84

88. Some witnesses viewed electronic tagging as a measure that should only be used in extreme cases, and perhaps only when other avenues had been pursued and failed.[67] Other witnesses opposed any use of tagging to enforce contact orders.[68] The Minister for Children herself was clearly uncomfortable with the idea, telling us that "tagging feels to us disproportionate".[69]

89. The Committee considers that the humiliating effect of a tagging device, and the possible effect on a child of subjecting a parent to tagging, mean that tagging is not a proportionate response to a breach of a contact order. **We therefore recommend that the courts should not have the power to impose an electronic compliance monitoring requirement in proceedings relating to contact arrangements.**

Enforcement powers

90. If a parent was failing without reasonable excuse to comply with a contact order, we would expect the court usually to impose a time and place requirement before resorting to enforcement powers. We would not, however, wish to tie the court's hands: it may sometimes be more appropriate in the circumstances of a particular case to consider enforcement immediately.

91. The enforcement powers in the draft Bill are intended to supplement, not replace, the court's existing powers to fine or imprison (under the Contempt of Court Act 1981) or to transfer residency of the child from the non-compliant parent to the other parent (under the Children Act 1989).

92. We are concerned at the apparent disconnection between the enforcement orders envisaged in the draft Bill, and the court's existing powers under contempt of court to fine or imprison. It is unclear, for example, what would happen if the enforcement order itself was breached. The draft Bill provides that, if there is a breach of an enforcement order, the court may either:

- amend the original enforcement order so as to make it more onerous, or
- make a new enforcement order in respect of the breach of the contact order, as if the original enforcement order had not been made.[70]

93. One of our witnesses, District Judge Walker, was unsure what "more onerous" actually meant.[71] Dame Elizabeth Butler-Sloss echoed these concerns, noting: "we should like to be reassured that breaches of enforcement orders carried the ultimate sanction of imprisonment for contempt".[72]

94. **The draft Bill fails to make a connection between the new enforcement orders and existing procedure and sanctions for contempt. If it is intended that the courts should have available to them a spectrum of enforcement provisions, ranging in severity, this should be made clear in the full Bill. This could be achieved by**

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67 Ev 37, para 1.8; Q 139 [Baroness Pitkeathley]; Q 314 [Ms Cronin]; Ev 182, section 2; Ev 2, para 7

68 Q 148 [Mrs Tyler]; Q 315 [Ms Harwin]; Q 272 [District Judge Taylor]; Q 88 [Dame Elizabeth Butler-Sloss]; Q 89 [Mrs Justice Bracewell]; Ev 185, para 1

69 Q 343

70 Schedule 1, para 7

71 Q 281

72 Ev 10

amending the draft Bill; or by amending section 14 of the Contempt of Court Act 1981 to expand the range of sanctions to include unpaid work.

Unpaid work

95. Turning to the detail of the proposed unpaid work requirement, there were differing views amongst witnesses about what kind of work it would be appropriate to order. The Grandparents' Association suggested that unpaid work with organisations working with children could be used to change the attitudes of recalcitrant parents:

"there would be the educative effect of working with children, seeing how other people relate to them and seeing, importantly, how other people put the child's needs before satisfying their own emotional needs, because that is what this is often about".[73]

However, the Criminal Law Solicitors' Association (CLSA) asked who would be responsible for assessing the intransigent parent as being suitable to perform the unpaid work.[74]

96. During our evidence session with the Ministers, it became clear that further clarification as to the type and form of unpaid work was not provided in the draft Bill because detailed thinking on this was still at an early stage. The Minister did, however, indicate that work with children would be a possible option which would also offer the parent "a good learning process".[75]

97. The Committee recognises that it may appear desirable for defaulting parents to be required to undertake unpaid work which is in some way connected to children and which might contribute to a better understanding of their own children's needs. However, the difficulty of organising such work, and the inevitable concerns about the possible impact upon other people's children, suggest that this will seldom be practicable. That still leaves open the question of whether the unpaid work that parents will be required to undertake is to be organised separately from "community service" performed by offenders—and if that is so, who is to have responsibility for identifying and organising such work. **We recommend that when the full Bill is introduced the Government clarify this point.**

Monitoring and implementing Enforcement Orders

98. In addition to providing information to the court about matters relevant to the making of an enforcement order, CAFCASS or a Welsh family proceedings officer could be asked by the court to monitor, or arrange for the monitoring of, an enforcement order. The draft Bill envisages that the local probation board would be responsible for organising the implementation of the order and that it would be the responsibility of the CAFCASS officer to act as the link between the probation officer and the family court.[76] However, when we questioned CAFCASS on this further extension of their role, they told us:

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73 Q 207 [Mr Harris]

74 Ev 153, para 7

75 Q 341 [Margaret Hodge MP]

76 Schedule 1, clause 3(1)(a)

"I think others are far better placed and better experienced to do that. I think we would work with our colleagues in the probation service, who run community sentencing programmes day in, day out, to do that on our behalf, or on the court's behalf."[77]

99. Given that CAFCASS does not envisage becoming directly involved in overseeing the enforcement of contact orders, we are unclear how the proposals will be operated and by whom. We are not aware of any consultation between the Government and the probation service concerning how the proposals for enforcement will operate. **It is essential that the Government (a) clarify who will be responsible for monitoring, implementing and ensuring compliance with an enforcement order; and (b) quantify the resource implications.**

Safety concerns

100. The draft Bill proposes that, before a court could make an enforcement order, it would have to be satisfied that the contact order had been breached "without reasonable excuse". Women's Aid were concerned that this safeguard was insufficient to ensure that the possible reasons for the breach of the contact order, particularly concerns about abuse or violence, were fully taken into account.[78] The NSPCC recommended:

"the first step in any case of non-compliance would be consideration by the court as to whether the order in its current terms is consistent with the court's responsibility to protect the welfare of the child. Such consideration would include both a full assessment and investigation of the potential risk to and the likely impact on the child of enforcing the contact order, including the risks arising from the child's involvement in domestic violence (s.120) and the need for separate representation of the child and his or her interests within the proceedings (s.122)."[79]

101. **In the light of these concerns, we recommend that, before making an enforcement order, the court should explicitly be required to consider the safety implications for each parent and for the child of making such an order; and should not make an order unless it is satisfied that it is safe to do so.**

Welfare of the child

102. Section 1(1) of the Children Act 1989 provides that when a court determines any question relating to the upbringing of a child or the administration of a child's property, "the child's welfare shall be the court's paramount consideration". This same "paramountcy principle" will apply in the ordering of contact activities.[80] But when a court considers making an enforcement order under the draft Bill, new section 11G(9) provides that it must "take into account the welfare of the child".[81] This difference was commented on by a number of witnesses. Academics from the Centre for Research on the Child and Family at the University of East Anglia argued:

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77 Q 130 [Mr Douglas]

78 Q 317. See also Ev 180.

79 Ev 103, para 2

80 Clause 3, new section 11A(8)

81 Clause 3, new section 11G(9)

"It seems inappropriate… that the lowest welfare test is to be applied in the most difficult cases where the court's intervention is at its most drastic and the potential gains for the child may be at their most marginal. In these cases the court has to balance the possible gains to the child from enforcing an order, with possible losses in terms of increased parental hostility and a negative impact on parental functioning. The use of the lower welfare test in the most difficult cases risks giving the impression that the court is more concerned with imposing its will rather than securing the best outcomes for the child."[82]

103. The NSPCC and NYAS were also critical of the non-application of the paramountcy principle.[83] They argued that as a result the prime focus of the draft Bill changed from protecting the child to asserting the rights of adults.

104. The legal witnesses to our inquiry tended to support the current wording of the draft Bill. Mrs Justice Bracewell explained:

"Once an order has been made, then the court has a public interest in seeing that that order is enforced. Obviously, you do take into account the welfare of the child, but not to be paramount, and there are many occasions, many other applications in which welfare is not the paramount consideration, so I personally do not have a problem with that."[84]

105. Families Need Fathers argued that reference to the welfare of children could be deleted from the draft Bill altogether, on the grounds that the welfare of the child had "already been settled" in the making of the contact order. It proposed that the requirement to take the child's welfare into account should be replaced with a requirement to apply the minimum sanction necessary to ensure compliance with an enforcement order.[85]

106. The Minister for Children told us that, in making an enforcement order, the court would be:

"… looking at the culpability of the parent in relation to a flagrant failure to abide by the contact order. The contact order is the thing that has the paramountcy of the interest."[86]

107. In paragraph 94 we recommend that clearer connections should be made between the enforcement powers proposed in this draft Bill, and courts' existing powers under the Contempt of Court Act 1981. It is well established, though there is no express provision in the 1981 Act, that a family court must carefully weigh in the balance the interests of the child concerned when considering whether to fine or imprison a parent who is in breach of a contact order. It would seem logical for family courts to perform the same balancing act when considering enforcement action under the powers proposed in the draft Bill. The wording of new section 11G(9) has been criticised by some of our witnesses, and was the subject of considerable discussion within this Committee. It does not seem to have had the desired effect of providing clarity. **We conclude that the Government should consider removing new section 11G(9) from the Bill altogether. It**

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82 Ev 141, para 3

83 Ev 103, para 3; Ev 185

84 Q63; see also Q64 [Butler-Sloss]

85 Ev 57, para 6

86 Q 331 [Margaret Hodge MP]

would be consistent with this conclusion for proposed new section 11I(9) also to be deleted from the Bill.

CHAPTER 5: COMPENSATION FOR FINANCIAL LOSS (CLAUSE 4)

108. Clause 4 would give the court the power to order the payment of compensation for financial loss incurred as a result of a failure by a party to comply with a contact order. Compensation would be ordered only after an application by a party to the contact order proceedings was made to the court, and only if the other party did not have a reasonable excuse for their failure to comply.[87] The amount of compensation would be determined by the court but could not exceed the amount of financial loss suffered by the applicant.[88] When making an order for financial compensation, the court would be required to take into account the financial circumstances of the person and the welfare of the child concerned.

109. A number of witnesses queried how a compensation order would operate in practice. The Association of District Judges submitted:

> "Whether it is workable will depend on the financial resources of the particular parties and the ability of the person causing the financial loss to pay without adversely affecting the needs of the children."[89]

110. Mr John Furness proposed that unless the compensation was taken from benefits or a person's salary, the provision would be unworkable.[90] Judith Masson suggested that it would be inappropriate to make the resident parent pay compensation to the non-resident parent if the latter was in arrears of child support payments.[91]

111. The draft Bill provides that an amount paid as compensation may be recovered by the applicant as a civil debt.[92] This approach was criticised by several witnesses, on the basis that a civil debt would be difficult to enforce. Dame Elizabeth Butler-Sloss submitted:

> "I think we ought to be able to treat that as contempt, and say, 'you pay, otherwise you go inside'; but to treat it as a civil debt means they have got to go to the county court and they have got to enforce it. The procedures in the country court are slow on enforcement, and I think it will be lost in the mist."[93]

112. District Judge Walker told us:

> "If we ordered compensation, then I think it ought to be as a criminal fine, rather than as a civil debt, so that there is a very clear message that this is something which has got to be paid and has got to be paid relatively quickly rather than at whatever small amount would otherwise be paid each week."[94]

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87 Clause 4, new section 11I

88 Clause 4, new section 11I(6)

89 Ev 87, para 15. See also Ev 175, section 4 and Ev 181-182.

90 Ev 163. See also Ev 165, para 6.

91 Ev 142

92 Clause 4, new section 11I(8)

93 Q 100

94 Q 286

113. When we put this suggestion to the Government, they told us:

> "To take this approach would… establish a system intended to punish the non-payment of the amount ordered by the court, rather than providing methods of ensuring that payment is made."[95]

114. We recognise the concerns of a number of our legal witnesses that recovering financial compensation by way of a civil debt may be difficult to enforce if a person fails to comply with the order. **We recommend that the Government re-evaluate this provision in order to place the onus firmly upon the court making the order to ensure that the debt is paid or, failing that, to ensure that other measures are substituted for the compensation order.**

115. **We further recommend that it should be made more clear, either on the face of the Bill or in guidance, that an application for compensation for financial loss can be made by either the non-resident or resident parent.**

95 Ev 120, para 6 contd.

CHAPTER 6: WELFARE CHECKLIST IN CHILDREN ACT 1989

116. The Constitutional Affairs Committee recommended an amendment to the "welfare checklist" in the Children Act 1989 to ensure that the courts have regard to the importance of sustaining a relationship between the children and a non-resident parent. That Committee argued: "Such an amendment would send a clear message to the courts, to parents and to their professional advisers about the importance of maintaining links between both parents and their children".[96]

117. Several of our witnesses agreed with this recommendation. For example, in response to a question about whether this should be included in the checklist, Mr Kirk of the FLBA told us:

> "I think at the moment we tend to take that as taken for read, but there is certainly no harm in spelling it out there, right at the very front of the Children Act."[97]

118. However, the Ministers raised the following concerns:

> "There is a reference already to parents in there. If you put in a further reference saying that it would be a good idea for non-resident parents to have access, I think you would be muddying the waters. It is the usual argument about muddying the waters over the paramountcy of the interests of the child."[98]

> "we had quite a debate when we were producing the Green Paper about whether it was useful to write into statute what was already in the common law, because the common law position... is absolutely clear that, except with very clear evidence to the contrary, it is in the child's best interest to have a meaningful relationship with both [parents]. For that reason, we did not think that there was any real benefit in putting it into statute."[99]

119. The reference to parents in the welfare checklist is in section 1(3)(f), which provides that a court shall have regard to "how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs".

120. The Ministers' second argument, that the addition would only reflect current practice, seems to contradict the first, that it would muddy the waters. On balance, we conclude that it would be useful to have in statute what is already considered sound practice by the courts.

121. **We endorse the recommendation of the Constitutional Affairs Committee that an amendment should be made to the 'welfare checklist' in the Children Act 1989 to ensure that the courts have regard to the importance of sustaining a relationship between the children and the non-resident parent.**

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96 *Family Justice: the operation of the family law courts*, para 153

97 Q 17 [Mr Kirk]

98 Q 330 [Margaret Hodge]

99 Q 330 [Lord Filkin]

CHAPTER 7: ADOPTIONS WITH A FOREIGN ELEMENT (CLAUSES 6 TO 8)

Current situation

122. The United Kingdom is a signatory to both the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption (Hague Convention) and the UN Convention on the Rights of the Child (UNCRC). The Hague Convention requires that inter-country adoption takes place only where it is in the child's best interests, that all adopters are assessed and approved and that no profit should be made from adoption processes. The UNCRC is a general statement of the basic human rights that children should expect to enjoy. Article 21 of the UN Convention concerns adoption and, in relation to inter-country adoption, requires countries to recognise that inter-country adoption may be considered an alternative means of child care if the child cannot be suitably cared for in its country of origin; ensures that the child enjoys safeguards and standards equivalent to those existing in national adoption and takes all appropriate measures to ensure that placement does not result in financial gain for those involved in the process.

123. The Secretary of State currently has no express statutory right to place restrictions on adoptions from a particular country. However, the United Kingdom has previously placed restrictions upon both Cambodia and Guatemala in respect of inter-country adoptions. At present, the United Kingdom requires that DNA testing take place for relinquished children in Guatemala to ensure that women giving children up for adoption are in fact their mothers.[100] In June 2003, the United Kingdom placed a temporary suspension on adoption by United Kingdom residents of children from Cambodia. This decision will be subject to a forthcoming judicial review, *R (Charlton Thomson and others) v Minister of State for Children*,[101] which we note is likely to raise further issues with regard to the provisions on inter-country adoption outlined in this draft Bill. The judicial review is due to be held in April 2005, after the publication of our report. **However, we expect the Government to take into account in the full Bill any issues arising from the judicial review proceedings.**

Consultation and Regulations

124. We were concerned to read suggestions that Part 2 of the draft Bill "was not preceded by consultation of any kind".[102] Certainly, the provisions of Part 2, unlike those in Part 1, have not been preceded by a Government White or Green Paper, nor are we aware of any other public consultation about this issue. **We consider that many of the problems arising within this part of the draft Bill, and outlined in our discussions below, could have been mitigated by greater consultation before publication.**

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[100] Ev 119

[101] CO/4555/04, listed to be heard by the Administrative Court on 18 and 19 April 2005.

[102] Ev 149, para 13

125. **We also note that a significant amount of detail in this part of the draft Bill has been left to regulations. This includes regulations to set out the special restrictions placed upon a country and to make provision for exceptional cases. The content of these regulations will be key to addressing some of the concerns we outline below.**

Reasons for imposition of special restrictions

126. Part 2 of the draft Bill would make statutory provision for the Secretary of State to impose special restrictions on adoptions from a specified country. This power would be exercised in circumstances where the Secretary of State believed that, because of practices in a particular country in connection with the adoption of children, it would be contrary to public policy to further the bringing of children into the United Kingdom from that country.

127. The meaning of "public policy" in this context is not defined or explained in the draft Bill or the Explanatory Notes. The draft Bill is therefore silent as to the criteria that the Secretary of State will apply when determining whether or not to apply special restrictions to a particular country from where a child could be adopted. Witnesses have argued that threshold tests should be outlined: "we would hope that the threshold tests, which need to be met before a state of origin is deemed a 'restricted country', will be set out in regulations".[103]

128. In oral evidence, the Minister for Children told us:

> "The criteria will be based on the Hague Convention criteria which state that it is the best interests of the child with respect for his or her fundamental rights and to prevent the abduction [or] the sale of or traffic in children... In both Cambodia and Guatemala we have reflected those criteria."[104]

129. In written evidence, the Minister later told us that she would be "unwilling to set strict criteria on the face of the Bill" as it "would be extremely difficult, if not impossible, to provide for every possible circumstance where special circumstances would be appropriate".[105] She proposed:

> "Instead I would envisage that the widely recognised principles which are set out in international law relating to children and to intercountry adoption would always be taken into account by the Secretary of State in making her decision. These principles would be those set out in both the United Nations Convention on the Rights of a Child... and the Convention on Protection and Cooperation in respect of Intercountry Adoption."[106]

130. We welcome the Minister's commitment that international law would always be taken into account when determining whether a country should face special restrictions and consider that this should be made clear within the legislation. **We recommend that it should be stated clearly on the face of the Bill that, in considering whether special restrictions ought to be imposed, the Secretary of State must have particular regard to the rights enshrined in the UN Convention on the Rights of the Child**

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[103] Ev 74, para 5

[104] Q 356 [Margaret Hodge MP]

[105] Letter from Rt Hon Margaret Hodge MP to Baroness Nicholson of Winterbourne, 14th March 2005

[106] Letter from Rt Hon Margaret Hodge MP to Baroness Nicholson of Winterbourne, 14th March 2005

(UNCRC) and the Hague Convention on Protection and Cooperation in respect of Intercountry Adoption.

131. The Secretary of State is of course bound by Section 6 of the Human Rights Act 1998, as a public authority, to act in a way which is compatible with the Convention rights. They can be judicially reviewed, on the application of an alleged victim, of a failure to do so. It is clear therefore, that any action undertaken in pursuance of the powers proposed under the draft Bill would have to be compliant with the Convention rights for it to be lawful.

Imposing special restrictions

132. Concern has been raised about the abrupt way in which prospective inter-country adoptions were halted once the suspension on adoptions from Cambodia was announced, with no forewarning given to prospective adoptive families, local authorities or voluntary adoption agencies.[107] Only those families who had already been matched with a child in Cambodia were allowed to proceed with adoption. This excluded even those who had already had their applications forwarded to Cambodia—a stage that is likely to have taken two years to achieve (with up to £5000 costs).

Requirement to consult

133. At present, the draft Bill provides that the Secretary of State must consult the National Assembly for Wales before declaring that special restrictions will apply to inter-country adoption from a particular country.[108] There is no requirement for the Secretary of State to consult any other parties.

134. The claimants from the judicial review case concerning Cambodia proposed that before imposing special restrictions the Government should be obliged to consult a range of stakeholders, including potential adoptive parents part-way through the process, local United Kingdom adoption agencies, social services departments, institutions working within the country and the government of the country concerned. They suggest that without this measure the draft Bill "places a disproportionate amount of power in the hands of the Secretary of State and her officials who inevitably cannot be fully informed about the circumstances on the ground in any particular country".[109]

135. They propose that a process of consultation might also enable other, less severe, proposals to be considered in order to address problems in relation to adoption within a particular country. This could include for instance DNA testing, as is already used in Guatemala, or enhanced entry clearance checks.[110] The Overseas Adoption Helpline agreed that the Government should "provide a notice period to all parties", in order to allow the country concerned to make representation to the Government and to provide a period of warning for prospective adopters. [111]

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[107] Ev 147, para 4

[108] Clause 6(4)

[109] Ev 149, para 16

[110] Ev 149, para 17

[111] Ev 75, para 5.11

136. We have not had an opportunity to discuss this issue directly with the Government, but understand that their argument against giving a notice period is that it could result in a rush to adopt from that country. Evidence from prospective inter-country adopters has indicated that it would be almost impossible to "rush" such a lengthy and bureaucratic process.

137. **We recommend that the full Bill should include a requirement for the Government to consult with relevant stakeholders before making a decision to impose special restrictions**.

Guillotine for proceeding with adoption from restricted countries

138. The draft Bill does not explicitly determine the cut-off point for allowing adoptions to proceed once special restrictions have been declared. However, as outlined above, in the case of Cambodia only those families who had already been matched with a child were allowed to proceed with adoption.

139. The applicants for judicial review in the Cambodian cases have raised concerns that the draft Bill makes "no provision **at all** for transitional cases, in particular those where prospective adopters are well advanced in the process of adopting".[112] This contrasts with measures taken by other countries that have also imposed inter-country adoption restrictions on Cambodia. In the US for instance:

"Special transitional arrangements were made for those 'pipeline' couples part way through the process at the time. These involved a dedicated team being sent to Cambodia to fully investigate such cases, in order that they could proceed but be given particular scrutiny. The French authorities have taken a similar approach."[113]

140. The Overseas Adoption Helpline suggested that "a different cut-off point would have been preferable and would not have compromised the best interests of the child concerned".[114] They consider that in future the Government should allow "all adoptions to proceed where the DfES Certificate of Suitability and Eligibility had been granted".[115]

141. **We recommend that the Government review the cut-off point for adoption from a restricted country, with the intention of providing transitional arrangements for those couples at an advanced stage in the adoption process, bearing in mind that the welfare of the child is at all times the paramount consideration.**[116]

Provision for exceptional cases

142. Clause 7(3) would allow exceptional cases to proceed in restricted countries if prospective adopters could persuade the Secretary of State that the general concerns which led to the imposition of special restrictions would not apply in the prospective adopter's individual circumstances. The Committee has heard from the Minister that exceptional cases could include a range of circumstances:

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112 Ev 149, para 16(3)

113 Ev 147, para 5

114 Ev 74, para 5.8

115 Ev 75, para 5.11

116 As is required in the Adoption and Children Act 2002.

"It is difficult to be precise because you do not want to exclude exceptional circumstances which might arise, but the sort of situation we are thinking of is if the issue of adoption is by a relative in another country or if it is a sibling of a child that has already been adopted in this country."[117]

143. The Overseas Adoption Helpline noted that there is a process for considering exceptional cases in relation to the current Cambodian suspension of inter-country adoptions, but that "concern has been expressed by prospective adopters caught by the suspension that the process is not transparent or accountable".[118]

144. They propose that two measures should be included in the Bill to make the process more transparent and accountable. First, there should be a clearly set out procedure for consideration of special circumstances cases at all stages in the process and not just in relation to cases where a particular named child is involved (as would appear to be envisaged in section 7(3)).[119] Second, decisions about exceptional circumstances should be subject to an independent appeals procedure:

"We would suggest that the Independent Review Mechanism established by s.12(1) Adoption and Children Act 2002 and already in operation be used for these appeals."[120]

145. **We agree that the procedure for considering exceptional cases in relation to a restricted country should be set out in the special restrictions regulations. We further recommend that the Government consider establishing an appeals procedure and explore whether this function could be undertaken by the Independent Review Mechanism established by the Adoption and Children Act 2002. Any appeals procedure must meet the requirement that the welfare of the child is at all times the paramount consideration.**[121]

Inter-Country Adoption Agency

146. Detailed consideration of the whole law and practice relating to inter-country adoption is beyond our remit. It is nevertheless appropriate to record the very clear evidence given by the witnesses from the Overseas Adoption Helpline that the United Kingdom is outside the main loop of most western states because it does not have a recognised national Inter-Country Adoption Agency. As a result, children from many potential donor countries are not available for adoption by United Kingdom citizens, with the effect that potential adopters may be forced to seek children from states where the pre-adoption practice is more likely to be unsatisfactory:

"We do not have specialist inter-country adoption agencies that have representatives in the overseas countries and that work collaboratively with them, and there are a number of countries that are closed to United Kingdom applicants because we do not have that system."[122]

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117 Q 364 [Margaret Hodge MP]

118 Ev 75, para 5.14

119 Ev 75, para 5.14

120 Ev 75, para 5.14; also see Ev 149, para 18

121 As is required in the Adoption and Children Act 2002.

122 Q 222 [Ms Haworth]. See also Ev 83.

"I think the lack of an agency is a huge one if one looks at child protection as well: because I think British families are thrust more onto the less organised countries, Cambodia being one of them, because many of the best organised countries do not want to work with British families. They do not want to work with individuals who are having to reinvent the wheel every time they do an adoption. They want to work with professional agencies who know exactly what they are doing and understand these incredibly complex structures."[123]

147. We were particularly concerned to hear that:

"Until we have agencies, I am not confident that the spirit of what we have been attempting to do in legislation will be achieved."[124]

148. The adoption agencies promoting inter-country adoption have done excellent work in creating opportunities for the adoption of children where it is in the interests of the child. However, these organisations may be perceived to have a conflict of interest when it comes to the possible application of restrictions on inter-country adoption. Although we have had insufficient time to consider these issues in detail, we consider the establishment of a body which would enjoy the confidence of all parties to inter-country adoptions, including government, would be a very positive step.

149. **We recommend that the Government should take steps to establish an inter-country adoption agency, which we believe would enhance good adoption practice and inform the Government about unsatisfactory practices in countries where children are available for adoption.**

[123] Q 224 [Ms Angell]

[124] Q 224 [Ms Angell]

CHAPTER 8: RESOURCES

The family courts and CAFCASS

150. The proposals within Part 1 of the draft Bill are part of a wider reform of the family justice system for private law cases. The partial Regulatory Impact Assessment (RIA) published alongside the initial Green Paper claimed that the proposals would be resource neutral overall, and this assertion was repeated in the RIA published with the draft Bill:

"The proposals here are aimed at improving the effectiveness and thus the efficiency of dealing with conflicted contact cases. Costs of the new disposals will be met from reduced expenditure on the repeated contact cases that would otherwise take place."[125]

151. Central to this assertion is the assumption that the proposals in the Green Paper will lead to earlier intervention and so reduce the overall caseload. A reduction of anything up to 60 per cent is expected to produce savings of between £5.1 million and £76.8 million per year.[126] Several of our witnesses have questioned this assumption.

152. The University of East Anglia research team argued that "it is difficult to envisage that the measures announced in the Green Paper will lead to a substantial reduction in court applications",[127] while Professor Judith Masson and Dr Cathy Humphreys of the University of Warwick told us that "there is currently no basis to suggest that changing the law in the way proposed in the draft bill will lead to the substantial reduction in cases suggested in [the draft Bill Explanatory Notes] para 58".[128]

153. District Judge Michael Walker suggested that the proposals might even lead to an increase in caseload:

"We do not know whether, if we have got greater powers of enforcement, it may mean that at large people may behave more reasonably and cases do not come to court. On the other hand, it may well be that a lot more cases will come. One thing I am aware of is that one third of fathers cease all contact within the first two years of separation. There is a whole variety of reasons why that happens, but I think a good number are because they experience difficulties with contact and they just give up. If they see that the courts have got greater powers and are going to be more minded to make sure that contact does occur where we believe it should occur, then they may come back into the system that they at the moment have opted out of, so numbers may go up."[129]

154. Such an outcome does not appear to have been considered by the Government, with the low-end £5.1 million saving estimate being based on a worst-case scenario of no decrease in caseload.

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125 RIA, para 7

126 RIA, para 24

127 Ev 142, section 7

128 Ev 144, section 6. See also Ev 168, para 23.

129 Q 284 [District Judge Walker]

155. **We recommend that the Government reconsider their assertion that the package of proposals contained in the Green Paper will lead to a reduction in caseload. The resource implications of an increase in caseload should be calculated and presented in the final RIA.**

156. The resource-neutral assertion is also based on an assumption that no additional resources would be required for CAFCASS or the Court Service. Anthony Douglas of CAFCASS explained to the Committee that, in relation to drafting new guidance, collecting parental contributions and monitoring the new regime, the costs would not be excessive:

> "I do not want to downplay those but I think the drafting of guidance is within routine management costs… Yes, there are always costs associated with new work but I believe that this Bill is mostly about giving judges and giving ourselves slightly greater power to bring intractable cases to a proper conclusion."[130]

157. This assumption too has been questioned. The Bar Council argued that:

> "The provisions potentially place a very considerable burden on [CAFCASS], both in terms of providing information and monitoring compliance. This service is already so overstretched that, even in urgent public law cases, there is often many weeks delay before an officer is appointed… It is noted that there is no intention to invest further resources into Cafcass. If the provisions are to be workable and effective, orders need to be implemented without delay and any breach quickly referred back to court. It is difficult to see that this will be achievable."[131]

158. Lord Justice Wall submitted:

> "I was very concerned to read in paragraph 39 of the Regulatory Impact Assessment that 'it is anticipated that no additional resources would be needed'… The Government perhaps needs to be reminded that its assertion that the creation of CAFCASS would be 'resource neutral' was not only seriously wrong, but a significant factor in the substantial difficulties which CAFCASS encountered in its early stages, and from which it is, to a substantial extent still suffering."[132]

159. To ensure that the point is clear: the draft Bill imposes a wide range of new duties on CAFCASS officers. These include advising courts on the suitability and availability of contact activities (new section 11C); monitoring participation in these activities (new section 11D); facilitating and monitoring compliance with a contact order (new section 11F); advising courts on possible enforcement orders; and monitoring compliance with them (both new section 11H). This may be counterbalanced, to some extent, by a reduction in the scope and number of reports that CAFCASS officers are required to make to the courts.

160. When questioned on this point, the Minister told us that CAFCASS had assured her that the change of direction away from detailed report-writing, and earlier intervention work meaning fewer cases ending up in court, would release the resources needed for the new duties proposed under the draft Bill. She concluded:

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130 Q 126 [Mr Douglas]

131 Ev 177, section 2. See also Ev 1, point 4.

132 v 10

"we will only bring this legislation in when we are clear that the resources are available and that requires both the judiciary and CAFCASS to stop doing some of the things they are currently doing."[133]

161. We appreciate the additional resources put into CAFCASS in recent years and commend the Government's statement that it will ensure that resources are available before the legislation is brought into force. **We recommend, however, that the full RIA should include a detailed explanation of how both CAFCASS and the Court Service can expect to meet their increased remits within existing costs.**

162. **We also recommend that the Government make clear what action it would take if extra resources were requested by CAFCASS or the Court Service following implementation of the legislation.**

Contact activities

163. It is clear that the success of the Bill's proposals rests on the availability of a range of contact activities at a local level. The Association of District Judges highlighted this point:

"The proposals will only work if they are properly resourced. Before a contact activity direction can be made the necessary information meetings, classes, programmes, counselling or guidance sessions must be available and capable of being accessed quickly and cheaply."[134]

164. It is not clear to the Committee how complete the provision of services is nationwide. If there are gaps these will need addressing with appropriate resourcing before the Bill's reforms are implemented. If the Government does not close the gaps in parts of the country where there is not a full range of activity options available to judges then these reforms may be subject to localised failure. The Government must therefore recognise that it may be necessary to provide additional up-front investment in the short term in order to realise more fully the significant potential costs savings later down the line.

165. **As noted in paragraph 49 above, we recommend that the Government carry out a review of the local service provision of contact activities. Ready access to these services is essential to the successful implementation of the Bill. Where gaps are found, the Government should be prepared to invest additional money to improve service provision and thereby, it is hoped, secure the anticipated future savings.**

Regulatory Impact Assessment

166. A Regulatory Impact Assessment (RIA) is an analysis of the costs, benefits and risks associated with a range of policy options. In August 1998 the Prime Minister announced that no policy proposal which has an impact on business, charities or voluntary bodies should be considered without an RIA being carried out.

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[133] Q 350 [Margaret Hodge MP]

[134] Ev 86, summary page 1, para 4. See also, for example, Ev 177, 2.1; Ev 1, point 1

167. Compared to many other RIAs, the assessment published in support of the draft Bill is thorough. Costs and savings associated with implementing the Green Paper proposals are compared with the option of doing nothing and, in accordance with Government guidance, estimates are presented as ranges, with some indication of the impact of changes in assumed input values.[135]

168. While we do wish to record our appreciation of the Department's work on this assessment, there are some shortcomings. The presentation of the RIA is somewhat confused, with the connection between assumptions and estimates not always made explicit and the choice of values sometimes appearing arbitrary.

169. For example, on enforcement orders, costs at the low-end of the estimate range are based in part on assumptions that the Green Paper proposals will lead to an 80 per cent reduction in enforcement cases each year and that just 1 per cent of these applications will result in an enforcement order, while high-end costs assume that there will be no reduction in the number of enforcement cases per year and that 3 per cent of these applications will result in an enforcement order.[136] The RIA fails to provide the reasoning behind the selection of these input values, however, nor does it provide any indication of how likely such outcomes are expected to be in reality.

170. The presentation is further confused by the listing in the RIA of costs for supporting advice and help agencies which appear to have already been committed and will therefore exist even in the absence of the Bill. This makes it harder to establish the additional costs solely related to the proposals in the Bill.

171. **We recommend that, in presenting the final RIA, the Government makes clear the basis of its assumed input values, makes explicit the connection between assumptions and associated estimates, and indicates the probability of costs and savings leaning towards the low- or high-end of the estimates. We also recommend that a summary of the estimated costs and savings associated with the two options is presented, so as to allow comparison of the relative merits of each proposal.**

172. More fundamentally, the RIA suffers from a lack of empirical data in relation to child contact activity in the courts. As such, several of the assumed input values which underpin the various low- and high-end estimates are based on sample data from just one piece of research.

173. For example, the RIA is consistent in its assumptions that there are currently some 7,000 enforcement cases annually and that approximately 60 per cent of parties in contact cases are legally aided. These figures are derived from an analysis of 300 cases,[137] but a recent study by the University of East Anglia into 59 cases in Essex has produced quite different results.[138] Despite the uncertainty, the RIA does not present a systematic analysis of the sensitivity of the various costs and savings estimates to alterations in these inputs.

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[135] *Better policy making: A guide to regulatory impact assessment*, Cabinet Office, para A4.14-A4.22

[136] RIA, paras 22-35

[137] RIA, paras 22 & 43-45

[138] *A profile of Applications and Respondents in Contact Cases in Essex*, Liz Trinder et al, DCA Research Series 1/05, January 2005

174. In response to questioning, the Department has told us that its estimates are designed to be "illustrative" only.[139] While we acknowledge that the Department has allowed for the uncertainty of many of the data inputs by presenting its estimates as ranges, we are surprised that it has not sought to achieve greater certainty by entering into further research into the current level of child contact activity in the courts. Moreover, we are disappointed to hear that the Government has no plans to introduce more systematic collection of those statistics currently only estimated from samples.[140]

175. **We recommend that, prior to the introduction of the full Bill, the Government improve their knowledge of current child contact activity in the courts, either through direct collection of statistics or through further sampling. Doing so will allow the Government to either rely less on assumed inputs or improve its confidence in its assumptions, and so narrow its costs and savings estimate ranges.**

[139] Ev 120, para 8

[140] Ev 120, para 9

CHAPTER 9: CONCLUSIONS AND RECOMMENDATIONS

Chapter 1: Introduction

176. We agree with the Commons Constitutional Affairs Committee that the courts are usually not the best place to resolve complex family disputes, and we agree with the general thrust of policy to utilise alternative resolution mechanisms, particularly mediation. Nevertheless, there will inevitably be some cases which do require the involvement of the courts, and these are likely to be the most difficult to resolve. (para 17)

Chapter 2: Contact Activities (clause 1)

177. We invite the Government to give consideration to permitting either parent to apply to the court where contact has broken down or is not proceeding satisfactorily. This would enable resident parents to apply to the court in circumstances where, in their view, the non-resident parent was failing to discharge his or her responsibilities to the children. It would then be open to the court to impose a contact activity upon that parent. (para 38)

178. The court should have the power to make a contact activity direction whether or not the application for contact is opposed. (para 40)

179. We invite the Government to consider including 'perpetrator programmes' (aimed at people who have been violent towards their partners) in the list of contact activity directions. (para 44)

180. We recommend that the Government give further thought to the relationship between contact activities and those programmes or initiatives which are currently the responsibility of the probation service, and in particular that they clarify the steps that will need to be taken before the family courts can be in a position to refer parents to these statutory and voluntary-run activities. (para 44)

181. Prior to ordering a contact activity, the Bill should require the court to consider the safety implications of making such a decision, both for the individual parents and for the child; and that the court should not require such an activity unless it is satisfied that it is safe to do so. (para 45)

182. We recommend that non-statutory guidance is made available to parents involved in contact proceedings and potential providers of contact activities, explaining in more detail what kinds of session, programme or class the courts may order under the contact activity provisions. (para 46)

183. We recommend that the Government review the availability across England and Wales of the sessions and programmes that might become contact activities. In the light of this review the Government should ensure that there is sufficient funding available for adequate provision across England and Wales. (para 49)

184. The review of contact activity provision should also consider the setting of minimum requirements which must be met before an organisation can be considered a contact activity provider, or provide for the inspection and approval of an organisation by an appropriately qualified person. (para 52)

185. We recommend that the Government include within the full Bill a provision giving the Court discretion to refer parties to a mediation service in order to explore whether this could be a viable option in their case. Exploring the prospects for mediation is not, and should not be confused with, compulsory mediation. One way to achieve this would be to bring into force section 13(1) of the Family Law Act 1996 (amended so that it applies not only to divorce cases but to all private law child disputes). (para 59)

186. The Government may, in the light of evaluation of the Family Resolution Pilot Project, wish to consider taking an order-making power in the full Bill to place family resolution schemes on a statutory footing, should they prove to be effective. (para 66)

Chapter 3: Facilitating and monitoring contact (clause 2)

187. We examine the issue of resources in detail in Chapter 8. In this Chapter we simply note the importance of ensuring that CAFCASS is appropriately resourced and organised to take on the new roles, including the facilitation and monitoring of contact, envisaged for it under the draft Bill. (para 72)

188. We recommend, in respect of Family Assistance Orders, that the full Bill should:

    (i) remove the requirement for there to be 'exceptional circumstances';

    (ii) remove the need to obtain the consent of all those who are to be named in the order;

    (iii) permit an order to be made for up to 12 months in the first instance (in line with the facilitation and monitoring provisions of clause 2), and to be renewed for an unlimited period of time if necessary; and

    (iv) require that FAOs should be operated by CAFCASS, or a Welsh family proceedings officer, which is equipped to carry out such work, and not local authorities. (para 79)

Chapter 4 Enforcement orders (clause 3)

189. We recommend that it be made plain on the face of the Bill that the court may not impose any of the enforcement measures available to it without first considering the scope for requiring a contact activity which might address the failure of contact arrangements in a more constructive way. (para 84)

190. The Committee does not consider that it would be appropriate for a family court to impose a curfew upon a parent purely as a punishment. It is our view that such a requirement should only be imposed in an attempt, directly, to promote compliance with the court's original order, for example as a means of ensuring that a parent was in an agreed location at an agreed time to allow contact to take place. (para 85)

191. The full Bill should give a court the power to make a "time and place requirement", specifying what action a parent who is in breach of a contact order must take in order to facilitate the contact envisaged in the original order; and including a warning that breach would lead swiftly to the making of an enforcement order. (para 86)

192. The courts should not have the power to impose an electronic compliance monitoring requirement in proceedings relating to contact arrangements. (para 89)

193. The draft Bill fails to make a connection between the new enforcement orders and existing procedure and sanctions for contempt. If it is intended that the courts should have available to them a spectrum of enforcement provisions, ranging in severity, this should be made clear in the full Bill. This could be achieved by amending the draft Bill; or by amending section 14 of the Contempt of Court Act 1981 to expand the range of sanctions to include unpaid work. (para 94)

194. We recommend that when the full Bill is introduced the Government clarify whether the unpaid work that parents will be required to undertake is to be organised separately from "community service" performed by offenders—and if that is do, who is to have responsibility for identifying an organising such work. (para 97)

195. It is essential that the Government (a) clarify who will be responsible for monitoring, implementing and ensuring compliance with an enforcement order; and (b) quantify the resource implications. (para 99)

196. Before making an enforcement order, the court should explicitly be required to consider the safety implications for each parent and for the child of making such an order; and should not make an order unless it is satisfied that it is safe to do so. (para 101)

197. The Government should consider removing new section 11G(9) from the Bill altogether. It would be consistent with this conclusion for proposed new section 11I(9) also to be deleted from the Bill. (para 107)

Chapter 5: Compensation for financial loss (clause 4)

198. We recommend that the Government re-evaluate clause 4 in order to place the onus firmly upon the court making the order to ensure that the debt is paid or, failing that, to ensure that other measures are substituted for the compensation order. (para 114)

199. We further recommend that it should be made more clear, either on the face of the Bill or in guidance, that an application for compensation for financial loss can be made by either the non-resident or resident parent. (para 115)

Chapter 6: Welfare checklist in Children Act 1989

200. We endorse the recommendation of the Constitutional Affairs Committee that an amendment should be made to the 'welfare checklist' in the Children Act 1989 to ensure that the courts have regard to the importance of sustaining a relationship between the children and the non-resident parent. (para 121)

Chapter 7: Adoptions with a foreign element (clauses 6 to 8)

201. We expect the Government to take into account in the full Bill any issues arising from the judicial review proceedings. (para 123)

202. Many of the problems arising within this part of the draft Bill, and outlined in our discussions below, could have been mitigated by greater consultation before publication. (para 124)

203. A significant amount of detail in this part of the draft Bill has been left to regulations. This includes regulations to set out the special restrictions placed upon a country and to make provision for exceptional cases. The content of these regulations will be key to addressing some of the concerns we outline below. (para 125)

204. It should be stated clearly on the face of the Bill that, in considering whether special restrictions ought to be imposed, the Secretary of State must have particular regard to the rights enshrined in the UN Convention on the Rights of the Child (UNCRC) and the Hague Convention on Protection and Cooperation in respect of Intercountry Adoption. (para 130)

205. We recommend that the full Bill should include a requirement for the Government to consult with relevant stakeholders before making a decision to impose special restrictions. (para 137)

206. We recommend that the Government review the cut-off point for adoption from a restricted country, with the intention of providing transitional arrangements for those couples at an advanced stage in the adoption process, bearing in mind that the welfare of the child is at all times the paramount consideration. (para 141)

207. The procedure for considering exceptional cases in relation to a restricted country should be set out in the special restrictions regulations. We further recommend that the Government consider establishing an appeals procedure and explore whether this function could be undertaken by the Independent Review Mechanism established by the Adoption and Children Act 2002. Any appeals procedure must meet the requirement that the welfare of the child is at all times the paramount consideration. (para 145)

208. We recommend that the Government should take steps to establish an inter-country adoption agency, which we believe would enhance good adoption practice and inform the Government about unsatisfactory practices in countries where children are available for adoption. (para 149)

Chapter 8: Resources

209. We recommend that the Government reconsider their assertion that the package of proposals contained in the Green Paper will lead to a reduction in caseload. The resource implications of an increase in caseload should be calculated and presented in the final RIA. (para 155)

210. The full RIA should include a detailed explanation of how both CAFCASS and the Court Service can expect to meet their increased remits within existing costs. (para 161)

211. We also recommend that the Government make clear what action it would take if extra resources were requested by CAFCASS or the Court Service following implementation of the legislation. (para 162)

212. As noted in paragraph 49 above, we recommend that the Government carry out a review of the local service provision of contact activities. Ready access to these services is essential to the successful implementation of the Bill. Where gaps are found, the Government should be prepared to invest additional money to improve service provision and thereby, it is hoped, secure the anticipated future savings. (para 165)

213. We recommend that, in presenting the final RIA, the Government makes clear the basis of its assumed input values, makes explicit the connection between assumptions and associated estimates, and indicates the probability of costs and savings leaning towards the low- or high-end of the estimates. We also recommend that a summary of the estimated costs and savings associated with the two options is presented, so as to allow comparison of the relative merits of each proposal. (para 171)

214. We recommend that, prior to the introduction of the full Bill, the Government improve their knowledge of current child contact activity in the courts, either through direct collection of statistics or through further sampling. Doing so will allow the Government to either rely less on assumed inputs or improve its confidence in its assumptions, and so narrow its costs and savings estimate ranges. (para 175)

APPENDIX 1: JOINT COMMITTEE ON THE DRAFT CHILDREN (CONTACT) AND ADOPTION BILL

The members of the Joint Committee which conducted this Inquiry were:

Vera Baird
Virginia Bottomley
David Chidgey
Ann Coffey
Jonathan Shaw
Clive Soley (Chairman)
Earl of Dundee
Baroness Gould of Potternewton
Baroness Hooper
Baroness Howarth of Breckland
Baroness Massey of Darwen (until 2 March)
Baroness Morgan of Drefelin (from 2 March)
Baroness Nicholson of Winterbourne

Interests relevant to this inquiry:

Vera Baird

Occasional cases as Queen's Counsel remunerated by the Legal Services Commission
Involvement with Women's Aid work in Redcar

Baroness Gould of Potternewton

Patron, Brighton Women's Centre
Chair, East Sussex Women's Refuge Project - fund raising committee

Baroness Howarth of Breckland

Board Member (deputy chair) of CAFCASS (Children and Families Court Advisory and Support Service)
Member, British Association of Social Workers
Associate, Association of Directors of Social Services
The Lucy Faithfull Foundation (Vice Chair and Trustee)
Chair of the Board of the Children's Helplines International
Little Hearts Matter (Trustee and Patron)
Patron, National Youth Advocacy Scheme

Full lists of Members' interests are recorded in the Commons Register of Members' Interests and the Lords Register of Interests.

APPENDIX 2: LIST OF WITNESSES

The following witnesses gave evidence. Those marked * gave oral evidence.

Association of District Judges*

Barnardo's

Ms T Boo

Both Parents Forever*

British Association for Adoption and Fostering (BAAF)

Dame Elizabeth Butler-Sloss and Mrs Justice Bracewell*

Campbell Chambers Solicitors

Centre for Research on the Child and Family, University of East Anglia

Centre for the Study of Safety and Well-being, University of Warwick

Children and Family Court Advisory and Support Service (CAFCASS)*

Children's Rights Alliance

Claimants in the Judicial Review case of R (Charlton Thomson and others) v Minister of State for Children

Criminal Law Solicitors' Association

Mr Philip Else

Families Need Fathers*

Family Law Bar Association*

Family Policy Alliance

Family Rights Group

Family Welfare Association

Rt Hon Frank Field MP

Mr Martyn Ford

Mr John Furness

Grandparents' Association*

Mr Joe Healy

Her Majesty's Court's Services Inspectorate (MCSI)

Her Majesty's Government*

Joan Hunt

Jewish Unity for Multiple Parenting (JUMP)

Law Reform Committee of the Bar Council

Mrs CA Maxwell

Mayor of London

National Association of Child Contact Centres*

National Family Mediation

National Family and Parenting Institute (NFPI)
National Youth Advocacy Service (NYAS)
National Society for the Prevention of Cruelty to Children (NSPCC)*
One Parent Families
Keith O'Reilly
Overseas Adoption Helpline*
Parenting Education and Support Forum
Parentline Plus
Karen Parsons
Planetary Alliance for Fathers in Exile (PAFE)
Refuge
Relate*
Resolution*
Kathy Riach
Mr Gary Robinson
Mr George Rutter
Shared Parenting (SPIG)
Mr David Thomas
United Kingdom College of Family Mediators*
UNICEF*
Welcare Accord Centre, Kilburn*
Women's Aid*
Leonid Yanovich

APPENDIX 3: CALL FOR EVIDENCE

The Joint Committee invites interested organisations and individuals to submit written evidence as part of its inquiry into the Draft Children (Contact) and Adoption Bill. Submissions, reflecting the guidance on written evidence given in this press notice, should reach the Committee as soon as possible and **must be submitted by Thursday 3 March 2005 at the latest.** The earlier written evidence is submitted the easier it will be for the Committee to consider it.

Scope of the Committee's inquiry

The Joint Committee expects to concentrate its inquiry on the following themes:

(1) Whether the proposed contact provisions, including enforcement, are appropriate and proportionate.

(2) Whether the proposed contact provisions, including enforcement, are workable.

(3) Whether the proposed contact provisions, including enforcement, are sufficient.

(4) Whether the proposed adoption provisions are necessary, workable and proportionate.

(5) Whether the draft Bill's proposed outcomes could be achieved through better means.

The Committee cannot investigate individual cases.

Written Evidence

All written evidence should be submitted to the Joint Committee no later than **Thursday 3 March 2005.** Given the limited time available for the submission of evidence and for the completion of the Committee's work, written evidence should be short and should concentrate on the major issues arising from the draft Bill. Please draft your comments in order of how the clauses appear in the draft Bill. Witnesses should feel free to cover only those aspects of the draft Bill in which they are particularly interested.

Written evidence should contain, if appropriate, a brief introduction to the persons or organisations submitting it. Submissions should take the form of a memorandum and should have numbered paragraphs. Submissions **should not exceed 1500** words in length. Unless submissions are very short, they should be accompanied by a summary. Submissions may be accompanied by background material (perhaps already published elsewhere), which will not be reprinted by the Joint Committee.

We wish to receive written evidence, if possible, in MS Word or rich text format, by e-mail to ccabill@parliament.uk. A single hard copy (single-sided, unbound) should also be sent to Scrutiny Unit, House of Commons SW1A 0AA. If you would find it difficult to submit evidence in this way, please do not hesitate to contact us to discuss alternatives.

10 February 2005

APPENDIX 4: LIST OF ACRONYMS

CAFCASS	Children and Family Court Advisory and Support Service
CASC	Children Act Sub-Committee
CLBA	Criminal Law Bar Association
CLSA	Criminal Law Solicitors' Association
DfES	Department for Education and Skills
Draft Bill	Draft Children (Contact) and Adoption Bill
FAOs	Family Assistance Orders
FLBA	Family Law Bar Association
FRPP	Family Resolutions Pilot Project
NACCC	National Association of Child Contact Centres
NYAS	National Youth Advisory Service
RIA	Regulatory Impact Assessment
UNCRC	United Nations Convention on the Rights of the Child

APPENDIX 5: FORMAL MINUTES

Extract from House of Lords Minute 2 February 2005

Children (Contact) and Adoption Bill- It was moved by the Lord President (Baroness Amos) that it is expedient that a Joint Committee of Lords and Commons be appointed to consider and report on any draft Children (Contact) and Adoption Bill presented to both Houses 2 February 2005 (Cm 6462), and that the committee should report on the draft Bill by 26 May 2005; the motion was agreed to and a message was ordered to be sent to the Commons to acquaint them therewith.

Extract from Votes and Proceedings of the House of Commons 8 February 2005

Draft Children (Contact) and Adoption Bill (Joint Committee)-*ordered,* That the Lords Message of 2 February relating to a Joint Committee of both Houses to consider and Report on the draft Children (Contact) and Adoption Bill presented to both Houses on 2 February 2005 (Cm. 6462) be now considered.

That this House concurs with the Lords that it is expedient that a Joint Committee of Lords and Commons be appointed to consider and report on any draft Children (Contact) and Adoption Bill presented to both Houses by a Minister of the Crown, and that the Committee should report on the draft Bill by 26th May 2005.

That a Select Committee of six honourable Members be appointed to join with the Committee appointed by the Lords to consider the draft Children (Contact) and Adoption Bill.

That the Committee shall have power—

(i) to send for persons, papers and records;

(ii) to sit notwithstanding any adjournment of the House;

(iii) to report from time to time;

(iv) to appoint specialist advisers; and

(v) to adjourn from place to place within the United Kingdom.

That the quorum of the Committee shall be two; and

That Vera Baird, Virginia Bottomley, Mr David Chidgey, Ann Coffey, Jonathan Shaw and Mr Clive Soley be members of the Committee.—*[Gillian Merron.]*

Extract from House of Lords Minute 9 February 2005

Children (Contact) and Adoption Bill- It was moved by the Chairman of Committees that the Commons message of yesterday be now considered, and that a committee of six Lords be appointed to join with the committee appointed by the Commons to consider and report on the draft Children (Contact) and Adoption Bill presented to both Houses on 2nd February 2005 (Cm 6462);

That, as proposed by the Committee of Selection, the Lords following be named of the committee:

E. Dundee, B. Gould of Potternewton, B. Hooper, B. Howarth of Breckland, B. Massey of Darwen, B. Nicholson of Winterbourne;

That the committee have power to agree with the Commons in the appointment of a chairman;

That the committee have leave to report from time to time;

That the Committee have power to adjourn from place to place within the United Kingdom;

That the quorum of the Committee shall be two;

That the reports of the Committee from time to time shall be printed, notwithstanding any adjournment of the House; and

That the Committee do report on the draft Bill by 26th May 2005;

The motion was agreed to and a message was ordered to be sent to the Commons to acquaint them therewith.

Extract from House of Lords Minute 2 March 2005

Children (Contact) and Adoption Bill – It was moved by the Chairman of Committees, that the Baroness Morgan of Drefelin be appointed a member of the Select Committee in place of the Baroness Massey of Darwen.

Wednesday 9 February 2005

Present:

Earl of Dundee	Vera Baird
Baroness Hooper	Mr David Chidgey
Baroness Howarth of Breckland	Ann Coffey
	Jonathan Shaw
	Mr Clive Soley

The Orders of Reference are read.

The declarations of relevant interests are made:

Vera Baird declared as an interest involvement with Women's Aid in Redcar

Ann Coffey declared an interest as a social worker before entering Parliament

Baroness Howarth of Breckland declared an interest as Deputy Chair of CAFCASS

Jonathan Shaw declared an interest as a social worker before entering Parliament

It is moved that Mr Clive Soley do take the Chair. — (*Earl of Dundee*)

The same is agreed to.

The Joint Committee deliberate.

Ordered, That Strangers be admitted during the examination of witnesses unless otherwise ordered.

Ordered, That the uncorrected transcripts of oral evidence given, unless the Committee otherwise orders, be published on the Internet.

Ordered, That the Joint Committee be adjourned to Thursday 24 February at 10 o'clock.

Thursday 24 February 2005 (morning)

Present:

Earl of Dundee	Virginia Bottomley
Baroness Gould of Potternewton	Mr David Chidgey
Baroness Hooper	Ann Coffey

Baroness Howarth of Breckland
Baroness Nicholson of Winterbourne
Mr Clive Soley in the Chair
Jonathan Shaw

The order of Adjournment is read.

The proceedings of Wednesday 9 February are read.

The Joint Committee deliberate.

Ordered, That Mr Andrew McFarlane QC and Professor Gwynn Davis be appointed as Specialist Advisers to assist the Committee.

The following witnesses are examined:

Mr Christopher Goulden, solicitor, Resolution (formerly the Solicitors Family Law Association); Mr Philip Moor QC, Chairman, and Mr Anthony Kirk, Vice-Chairman, Family Law Bar Association; Dame Elizabeth Butler-Sloss, President, and Mrs Justice Bracewell, Judge, the Family Division of the High Court.

Ordered, That the Joint Committee be adjourned to today at half-past two o'clock.

Thursday 24 February 2005 (afternoon)

Present:

Baroness Gould of Potternewton
Baroness Howarth of Breckland
Baroness Nicholson of Winterbourne
Vera Baird
Virginia Bottomley
Mr David Chidgey
Ann Coffey
Jonathan Shaw

Mr Clive Soley in the Chair

The Order of Adjournment is read.

The proceedings of the meeting this morning are read.

The Joint Committee deliberate.

The following witnesses are examined:

The Baroness Pitkeathley OBE, a Member of the House of Lords, Chair, Mr Anthony Douglas, Chief Executive and Ms Susan Arnold, Children and Family Court Advisory and Support Service (CAFCASS); Mrs Beverley Brooks MBE, Chief Executive, National Association of Child Contact Centres; Mrs Grizelda Tyler, Chair of Trustees of Welcare Accord Centre; Ms Angela Sibson, Chief Executive, Relate; Ms Karin Walker, Vice-Chair of Board of Governors, Mrs Anna Bloor, Member of the Board of Governors, United Kingdom College of Family Mediators.

Ordered, That the Joint Committee be adjourned to Thursday 3 March at quarter to 10 o'clock.

Thursday 3 March 2005 (morning)

Present:

Earl of Dundee
Baroness Gould of Potternewton
Baroness Hooper
Baroness Howarth of Breckland
Baroness Nicholson of Winterbourne
Vera Baird
Ann Coffey
Jonathan Shaw

Mr Clive Soley in the Chair

The Order of Adjournment is read.

The proceedings of Thursday 24 February are read.

The Joint Committee deliberate.

The following witnesses are examined:

Mr John Baker, Chairman, and Ms Sue Secker, Families Need Fathers; Mr Peter Harris, Chairman, the Grandparents' Association, Mr John Bell, Chairman, Both Parents Forever; Mr Nigel Cantwell, UNICEF; Ms Gill Haworth, Director and Ms Naomi Angell, Legal Adviser, Overseas Adoption Helpline; District Judge John Taylor and District Judge Michael Walker, Association of District Judges.

Ordered, That the Joint Committee be adjourned to today at half-past two o'clock.

Thursday 3 March 2005 (afternoon)

Present:

Baroness Gould of Potternewton	Vera Baird
Baroness Hooper	Ann Coffey
Baroness Howarth of Breckland	Jonathan Shaw
Baroness Nicholson of Winterbourne	

Mr Clive Soley in the Chair

The Order of Adjournment is read.

The proceedings of the meeting this morning are read.

The Joint Committee deliberate.

The following witnesses are examined:

Ms Nicola Harwin, Chief Executive, Women's Aid; Ms Natalie Cronin, Head of Policy, NSPCC; Rt Hon Margaret Hodge, a Member of the House of Commons, Minister for Children, Young People and Families, and Lord Filkin, a Member of the House of Lords, Parliamentary Under-Secretary of State, Department for Education and Skills.

Ordered, That the Joint Committee be adjourned to Thursday 10 March at 10 o'clock.

Thursday 10 March 2005

Present:

Baroness Gould of Potternewton	Vera Baird
Baroness Hooper	Virginia Bottomley
Baroness Morgan of Drefelin	Mr David Chidgey
	Jonathan Shaw

Mr Clive Soley in the Chair

The Order of Adjournment is read.

The proceedings of Thursday 3 March are read.

The Joint Committee deliberate.

Ordered, That the Joint Committee be adjourned to Thursday 17 March at 10 o'clock.

Thursday 17 March 2005

Present:

Earl of Dundee	Vera Baird
Baroness Howarth of Breckland	Mr David Chidgey
Baroness Morgan of Drefelin	Ann Coffey
	Jonathan Shaw

Mr Clive Soley in the Chair

The Order of Adjournment is read.

The proceedings of Thursday 10 March are read.

The Joint Committee deliberate.

Ordered, That the Joint Committee be adjourned to Thursday 24 March at 10 o'clock.

Thursday 24 March 2005

Present:

Earl of Dundee	Vera Baird
Baroness Gould of Potternewton	Virginia Bottomley
Baroness Hooper	Mr David Chidgey
Baroness Howarth of Breckland	Ann Coffey
Baroness Morgan of Drefelin	

Mr Clive Soley in the Chair

The Order of Adjournment is read.

The proceedings of Thursday 17 March are read.

The Joint Committee deliberate.

It is moved that the draft Report before the Committee be read.

The same is agreed to.

Paragraphs 1 to 172 are agreed to.

Resolved, That the draft Report be the Report of the Committee to both Houses.

Ordered, That the memoranda received by the Committee be appended to the Minutes of Evidence,

Ordered, That the provisions of Commons Standing Order No. 134 (Select committees (reports)) be applied to the Report.

Ordered, That the Chairman do make the report to the House of Commons and Baroness Gould of Potternewton do make the report to the House of Lords.

Ordered, That the Joint Committee be now adjourned.

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