



House of Commons

House of Lords

Joint Committee on Human
Rights

**Legislative Scrutiny:
(1) Children and Social
Work Bill; (2) Policing
and Crime Bill;
(3) Cultural Property
(Armed Conflict) Bill**

Third Report of Session 2016–17



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*Report, together with formal minutes relating
to the report*

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Publication

Committee reports are published on the Committee's website at www.parliament.uk/jchr by Order of the two Houses.

Evidence relating to this report is published on the relevant inquiry pages of the Committee's website.

Committee staff

The current staff of the Committee are Robin James (Commons Clerk), Donna Davidson (Lords Clerk), Murray Hunt (Legal Adviser), Alexander Horne (Deputy Legal Adviser), Ami Breen (Legal Assistant), Penny McLean (Committee Specialist), and Miguel Boo Fraga (Committee Assistant).

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1 Children and Social Work Bill

Background

1. The Children and Social Work Bill was introduced in the House of Lords on 19 May 2016.¹ It received its Second Reading on 14 June² and completed 5 days in Grand Committee in the Lords on 13 July. Report Stage is scheduled to begin on Tuesday 18 October. The House of Lords Library has published a Note on the Bill.³

2. The Government says that the Bill is part of a package of measures to improve children’s social care and safeguarding and is designed to strengthen the quality and range of support for vulnerable children and young people. The Bill has three main purposes:

- (1) improving decision-making and support for looked after children and care leavers in England and Wales;
- (2) enabling better learning about effective approaches to child protection and social care in England; and
- (3) enabling the establishment of a new regulatory regime for social workers in England.

3. Lord Nash, Parliamentary Under-Secretary of State at the Department for Education, has certified that in his view the provisions of the Bill are compatible with the Convention rights.

4. The House of Lords Constitution Committee has published a Report on the Bill which is very critical of the framework nature of much of the Bill and the extensive powers it would grant to the Secretary of State.⁴ The Constitution Committee is concerned that the Bill continues the worrying trend on which that Committee has frequently commented in the first session of this Parliament,⁵ whereby Parliament is asked to agree legislation that lacks the crucial detail which is necessary for Parliament to scrutinise it properly. We have similar concerns about certain aspects of the Bill.

5. The Delegated Powers and Regulatory Reform Committee has also published two reports on the Bill.⁶ We consider some of the Committee’s concerns about the Bill below.

1 [Children and Social Work Bill](#), [Lords] [Bill 1 (2016–17)]. The current version of the Bill is [Children and Social Work Bill](#), [Lords] [Bill 57 (as amended in Grand Committee) (2016–17)].

2 HL Deb, 14 Jun 2016, [cols1111–1210](#)

3 *Children and Social Work Bill*, Lords Library Note, [LLN 2016/031](#), June 2016

4 House of Lords, Report of the Select Committee on the Constitution, Session 2016–17, Children and Social Work Bill[HL], [HL Paper 10](#)

5 See House of Lords, Report of the Select Committee on the Constitution, 2016–17, *Sessional report*, [HL Paper 9](#), highlighting a number of Bills from the 2015–16 Session as examples of vaguely worded legislation containing extensive delegated powers that would allow ministers a great degree of discretion when subsequently implementing legislation, and representing a “constitutionally inappropriate” shift of power from Parliament to Government.

6 House of Lords, First Report of the Select Committee on Delegated Powers and Regulatory Reform, Session 2016–17, [HL Paper 13](#); House of Lords, Second Report of the Select Committee on Delegated Powers and Regulatory Reform, Session 2016–17, [HL Paper 21](#)

Information provided by the Government

6. The Department for Education conducted a “Child rights impact assessment” assessing the impact of the Bill on children’s rights under the UN Convention on the Rights of the Child (“UNCRC”), which was published along with other impact assessments on the Bill’s introduction.

7. An ECHR Memorandum was not initially provided to us. The Explanatory Notes to the Bill contain a short section on the Bill’s compatibility with the ECHR (paras 170–176). Our Legal Adviser met lawyers from the Bill team on 30 June, and a full ECHR Memorandum was provided on 1 July.

8. **We thank the Department for Education for providing a full ECHR Memorandum and a full UNCRC impact assessment, which have both helped us in our human rights scrutiny of the Bill. We remind Departments that we expect such memoranda to be published at the same time as the Bill is introduced, to enable us and other Committees to begin our scrutiny of the Bill as early as possible and to report in time to inform debates on the Bill as it proceeds through both Houses.**

9. We wrote to the Minister on 13 July asking a number of questions about human rights issues raised by the Bill, including whether the Bill provides opportunities to give further and better effect to the UN Convention on the Rights of the Child in England; support for care leavers; the sharing of information about children with the Child Safeguarding Practice Review Panel; the risks to children’s rights in the power to exempt from or modify the requirements of children’s social care legislation; and the proposed new regulatory regime for social workers.

10. We asked for a response by 29 July, in keeping with our usual practice of giving Departments two weeks to respond to letters about Bills, to enable us to consider the Government’s response before reporting on the Bill in time to inform debate at Report stage.

11. The Government’s response was received on 13 September, more than 6 weeks late. Fortunately, but fortuitously, this is still just in time to enable us to report on the Bill before it reaches its Report stage. **We remind the Government of the importance of replying promptly to our inquiries about Bills to enable us to perform our human rights scrutiny role in time to inform parliamentary debate.**

12. We also asked the Children’s Commissioner for England and the Equality and Human Rights Commission (“EHRC”) about the Bill during an oral evidence session about the UNCRC on 14 September 2016, and we received written comments from the Children’s Commissioner for Wales. We refer to their evidence at appropriate points in our Report.

13. We are grateful to everybody who has helped us with our scrutiny of the Bill.

Human rights enhancing aspects of the Bill

14. The human rights memorandum prepared by the Department for Education for the JCHR justifiably claims:

In general, this is a human rights enhancing Bill. It strengthens the level of support which local authorities must give to looked after children and care leavers, it seeks to introduce improved processes of lesson learning in relation to cases of child harm and neglect, and it puts in place structures for ensuring that social workers in England are of the highest possible calibre.

15. We agree that certain aspects of the Bill are potentially human rights enhancing. For example, extending care leavers' entitlement to a personal adviser beyond those care leavers who are in education and training is a positive step towards providing more support to care leavers who are clearly a vulnerable group. And providing for centralised reviews of complex cases, where children have been the subject of serious incidents of abuse or neglect which have caused them death or harm, to ensure the lessons to be learnt from such cases are learnt more widely, should help the UK to fulfil its duty to prevent such harm from happening again.

16. The Government's response to our letter is also constructive and helpful, in keeping with the high quality of the UNCRC Memorandum that was provided to us alongside the Bill when it was introduced. The Minister in his letter also claims that the Bill not only protects children's existing rights, but will enhance them too, including in ways which address points raised by the UN Committee in its Concluding Observations following the recent hearing in Geneva, for example through putting children's best interests at the heart of decision-making in care proceedings and improving support for children in alternative care.

17. We welcome those aspects of the Bill which enhance protection for children's rights and in particular those which give effect to recommendations recently made by the UN Committee on the Rights of the Child in its Concluding Observations on the UK. In our Report, however, we focus on areas where the Bill could be improved from the point of view of children's rights.

Giving better effect to children's rights in England

An English duty to have due regard to children's rights

18. The Bill, which makes general provision in relation to the welfare of children in England and Wales,⁷ but primarily applies to England only,⁸ provides an opportunity for Parliament to consider whether it wishes to follow the lead given by the National Assembly for Wales and the Scottish Parliament by legislating to give better effect to children's rights in England.

19. The National Assembly for Wales and the Scottish Parliament have both passed legislation designed to give better protection to children's rights in Wales and Scotland respectively. In Wales, Ministers are under a duty to have due regard to the requirements of the UNCRC when exercising any of their functions.⁹ A person exercising any social services function in relation to children must also have due regard to the UNCRC.¹⁰

7 The Bill extends to England and Wales only: see [Children and Social Work Bill](#) [HL], Clause 59(2)

8 See [Explanatory Notes to the Children and Social Work Bill](#), [Bill 1 (2016–17) –EN], Annex A.

9 The Rights of Children and Young Persons (Wales) Measure 2011, [section 1](#)

10 Social Services and Well-being (Wales) Act 2014, [section 7\(2\)](#)

20. In Scotland, Ministers are under a duty to keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements and to take any such steps if it is considered appropriate to do so; and must report every three years to the Scottish Parliament on what steps they have taken.¹¹ Certain public authorities in Scotland are also under a duty to publish a report every three years on what steps they have taken within their area of responsibility to secure better or further effect to the UNCRC.¹²

21. In England, there is no equivalent statutory provision designed to give better and further effect to the rights of children as set out in the UNCRC. The Government has given a voluntary commitment that it will always give due consideration to the UNCRC when developing new policy and legislation,¹³ and this has occasionally led to Child Rights Impact Assessments being carried out in relation to some Bills such as the current one which affect children's rights. The only statutory provision in England requiring regard to be had to the UNCRC concerns the Children's Commissioner for England. The primary function of the Children's Commissioner for England is promoting and protecting the rights of children in England, which includes promoting awareness of the views and interests of children in England, and the Commissioner must have regard to the UNCRC "in considering for the purposes of the primary function what constitutes the rights and interests of children."¹⁴ However, there is no general statutory provision which requires public authorities in England to have regard to children's rights or the UNCRC when exercising their functions relating to children.

22. We asked the Government whether it would consider following the lead given by Scotland and Wales in trying to give further and better effect to children's rights in England, by including a duty on public authorities to have due regard to the UNCRC when exercising any of their functions in relation to children.

23. The Minister, in his letter of 12 September in response to our letter, says that the Government "are committed to ongoing implementation of the UNCRC", and to working closely with partners to ensure the Government have a good understanding of how UNCRC implementation "can continue to be progressed."

24. However, the Government says that while it is monitoring the situation in Wales and Scotland, where such a duty has been introduced, it remains to be convinced that such a duty would make a real, practical difference to children's lives and outcomes, rather than produce a tick-box mentality. The risk of a duty, in the Government's view, is that it just creates additional bureaucracy rather than bringing about the change in mind-sets and culture that is really needed.

25. The Government points out that it has maintained its voluntary 2010 commitment to give due consideration to the UNCRC when developing new laws and policies, and says that the Minister for Children and Families wrote to colleagues on the Government's Home Affairs Committee (the internal committee which gives clearance for legislation), highlighting the importance of the UNCRC and the need to take it into account in plans and decisions affecting children. Significantly, however, the Government acknowledges that there is considerable room for improvement:

11 Children and Young People (Scotland) Act 2014, [section 1](#)

12 *Ibid.*, [section 2](#)

13 HC Deb, 6 Dec 2010, [col7WS](#)

14 Children Act 2004, [section 2A\(1\)](#), as inserted by the Children and Families Act 2014.

We would accept, however, that more needs to be done to ensure that the impact of legislation, policy and delivery of services on children's rights is assessed more routinely and analytically. This is particularly true of those departments or bodies whose primary role is not directed at children and young people. ...DfE officials are therefore exploring how best to raise awareness of the UNCRC across Whitehall, to strengthen their assessment of children's rights in line with our commitment, and to ensure that the relevant individual departments take ownership of the UN's Concluding Observations.

26. An amendment to the Bill which would have required public authorities to have due regard to the UNCRC when exercising any function relating to safeguarding and promoting the welfare of children, was tabled, by Baroness Walmsley and Lord Ramsbotham, and debated in Grand Committee. The Government resisted the amendment on essentially the same grounds as outlined above: the Government is not convinced that a statutory due regard duty would have a real impact on children's lives; the Government maintains its voluntary commitment to give due consideration to the UNCRC; legislation is already assessed to ensure compatibility with the UNCRC; and at a local level the Government does not accept that placing additional duties on public bodies is the right approach: it prefers a more targeted approach of providing support and guidance to specific professionals or in relation to specific aspects of children's rights.

27. We welcome the Government's commitment to progressive implementation of the UNCRC. However, there is growing criticism that the Government is not doing enough to protect children's rights in England in particular. Both the Children's Commissioner for England, Anne Longfield, and the Equality and Human Rights Commission, through Commissioner Lorna McGregor, called for a statutory due regard duty to be introduced when they gave evidence to us recently.¹⁵ We also note that the UN Committee on the Rights of the Child, in its recent Concluding Observations, considers that the UK can do more to implement the UNCRC by way of legislation. It recommended that the UK expedite bringing its domestic legislation, at the national and devolved levels, in line with the UNCRC in order to ensure that the principles and provisions of the Convention are directly applicable and justiciable under domestic law.¹⁶

28. We have therefore considered carefully the arguments for and against introducing a statutory duty on public authorities in England requiring them to have due regard to the rights of children in the UNCRC when exercising their functions relating to children. The EHRC has analysed the evidence which is so far available about the impact of the equivalent duties in Wales and Scotland,¹⁷ and it has found that the evidence demonstrates in both jurisdictions that the duties have made a real, practical difference to the degree of protection afforded to children's rights in the law and policy-making process. The EHRC has found that detailed procedures for assessing the impact of laws and policies on children have been developed and embedded within the devolved Governments, and it points to actual examples of legislative and policy measures which have been preceded by detailed assessments of the impact on children's rights as a direct result of the new statutory duty.

15 Oral evidence taken on 14 September 2016, HC (2016–17) [663](#)

16 United Nations Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, June 2016, [para. 7\(a\)](#)

17 EHRC briefing on the impact of statutory children's rights duties in Scotland and Wales (October 2016), [CSW0002](#)

29. In addition to this evidence from Scotland and Wales that the statutory duty is already having a real practical impact on the protection of children's rights, we note that the Government's assertion that legislation is already assessed for compatibility with the UNCRC is not borne out by the evidence. There have been some examples of excellent children's rights impact assessment being carried out by departments in relation to particular Bills (e.g. the Modern Slavery Bill, the Children and Families Bill and the current Bill), but there are also a number of examples of Bills having a really significant impact on children's rights where no such assessment was carried out: the Legal Aid, Sentencing and Punishment of Offenders Bill, the Welfare Reform Bill and the Courts and Criminal Justice Bill, to name just a few. The lack of such assessments is a matter of public record: we and our predecessor committee have criticised departments for the failure to carry out such assessments; the UK Supreme Court found the household benefit cap to be in breach of the UNCRC; and the UN Committee on the Rights of the Child has also now commented on the lack of an obligation to systematically conduct a child rights impact assessment when developing law and policies affecting children.

30. **We welcome the Department's acknowledgment that more needs to be done to ensure more systematic consideration of the impact of laws and policies on children's rights. We have considered the arguments and the evidence for and against introducing a statutory duty on public authorities in England requiring them to have due regard to the rights of children in the UNCRC in the exercise of their functions relating to children, equivalent to the duties already introduced in Wales and Scotland. Having taken into account the practical implications for local authorities, in our view the case is made out. *We recommend that Parliament takes the opportunity presented by this Bill to enhance the protection of children's rights in England by introducing such a duty.* The following amendment would give effect to this recommendation within the scope of the current Bill:**

In the Children and Social Work Bill, Part 1, Chapter 2 (Other provision relating to children in England), before clause 10 insert:

New Clause

Duty to have due regard to United Nations Convention on the Rights of the Child

- (1) A public authority must, in the exercise of its functions relating to safeguarding and the welfare of children, have due regard to the UN Convention on the Rights of the Child.**
- (2) For the purposes of this section,**
 - (a) 'public authority' has the same meaning as in s. 6 of the Human Rights Act 1998, and**
 - (b) 'United Nations Convention on the Rights of the Child' has the same meaning as in s. 2A(2) of the Children Act 2004.**

Corporate parenting principles

31. The Bill introduces a framework of “corporate parenting principles” which are designed to clarify for local authorities what it means to act as a good parent towards looked after children.¹⁸ The principles require the local authority, in carrying out their functions in relation to children and young people, to have regard to certain listed matters, such as the need to act in the best interests and promote the health and well-being of the children and young people.

32. We welcome the introduction of corporate parenting principles as having the potential to enhance the protection of the rights of looked after children, including their right to have their best interests treated as a primary consideration and their right to health and well-being.

33. However, we have also considered whether the introduction of such a statutory set of corporate parenting principles is an opportunity to give further effect in our national law to the rights of children in the UNCRC in the specific context of the particularly vulnerable category of looked after children. We therefore asked the Government whether it would consider adding to the list of corporate parenting principles in the Bill an express requirement that a local authority must also have regard, in relation to children (under 18s), to the UNCRC and its Optional Protocols.

34. The Government says in response that it does not believe this is necessary. It says that the corporate parenting principles in the Bill are completely consistent with the obligations of the UK as a signatory to the UNCRC, and points out that statutory guidance on the roles and responsibilities of Directors of Children’s Services and the Lead Member for Children’s Services, which was reissued in 2013, already makes clear that they should have regard to the General Principles of the UNCRC and ensure that children and young people are involved in the development and delivery of local services.

35. The new statutory duty on public authorities in England that we recommend above, to have due regard to the rights of children in the UNCRC in the exercise of functions relating to children, would apply to local authorities when acting as corporate parents, and there would therefore be no need to insert any express reference to the UNCRC in the list of corporate parenting principles. However, Parliament may wish to consider such an amendment in the event that the more general duty does not find favour.

Support for care leavers

A human rights enhancing measure

36. The Bill improves support for young people leaving care by extending the entitlement of those aged 16–25 to have a personal adviser, regardless of whether they are in or planning to return to education and training, where they want one and regardless of their circumstances.¹⁹

37. We welcome this provision as a human rights enhancing measure. The UN Committee on the Rights of the Child recently expressed concern about children leaving

¹⁸ [Children and Social Work Bill \[HL\]](#), Clause 1

¹⁹ [Children and Social Work Bill \[HL\]](#), Clause 3, inserting new section 23CZB into the Children Act 1989

foster care or residential care not receiving proper support and counselling, including on their future plans,²⁰ and recommended that the UK “provide sufficient support for care leavers, including for accommodation, employment or further education.”²¹ The provision in clause 3 of the Bill goes some way to meeting this recommendation.

A right to request or a duty to offer?

38. However, it is not clear on the face of the Bill whether a local authority is under an obligation to offer such support to care leavers. The Bill currently provides that this advice and support is available “on request”. It does not impose any obligation on the local authority to offer such support.

39. Considering that care leavers may not be aware of the availability of such support, or of their entitlement to it, we asked why the duty on local authorities to provide it depends on it being requested by the care leaver, rather than offered by the local authority.

40. The Government said in response that the Bill is designed to allow a tailored approach which reflects the needs and wishes of the individual, rather than a requirement to provide the same service to all care leavers, as not all care leavers will need or want ongoing support, and some may not need it until well after they have left care.. It pointed out that the Bill does make clear that local authorities must take steps to inform care leavers that they can request such support,²² and says that the statutory guidance which the Government will develop to support implementation of the Bill will make clear that the offer needs to be available throughout the period up to the care leaver reaching the age of 25, and that care leavers should receive regular reminders that it is open to them to request it.

41. In our view the right to support would have been more practically effective if the Bill had imposed a duty on local authorities to offer advice and support directly to care leavers, rather than merely to take steps to inform them of their right to make a request for such support. This would still allow for a tailored approach, as not all care leavers will take up the offer, and local authorities will not therefore be required to provide the same service to all care leavers. We welcome the Government’s amendments to clause 3 of the Bill, tabled for consideration at Report stage, which remove all references to the further advice and support being available “on request” and impose instead a duty on the local authority to offer such advice and support.²³ These amendments meet our concern that the additional support might not be effective in practice because care leavers may not be aware of their entitlement.

Resources

42. We also asked the Government whether additional resources will be available to local authorities to finance this additional entitlement to advice and support. The Government recognise that this provision of the Bill will increase the number of care leavers who local

20 United Nations Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, June 2016, [para. 51\(f\)](#)

21 *Ibid.*, [para. 52\(f\)](#)

22 [Children and Social Work Bill \[HL\]](#), Clause 3(7)

23 New section 23CZB(7) Children Act 1989, inserted by clause 3(2) of the Bill

authorities will be required to support and so represents a new burden for them. The DfE's impact assessment on the Bill provisionally assesses the cost as being £4million in 2017–18 and £8million in each subsequent year for the rest of the Spending Review Period.

43. We welcome the Government's recognition of the additional burden that will be placed on local authorities and its clear undertaking that "DfE will provide additional funding for this." However, the Government's response also states that "if introduced incrementally, this would reduce required funding in the first years of implementation", without explaining what it means by introducing the change incrementally. Having decided to make such further advice and support available, it would not be fair to make it available to some care leavers but not to others. We recommend that the Government clarify what it has in mind when it refers to the possibility of introducing the change "incrementally."

Proximity of care leavers' accommodation

44. The UN Committee on the Rights of the Child was also concerned that care leavers often have to live far away from their former carers.²⁴

45. We asked the Government whether anything in the Bill would help to meet this specific concern about the proximity of care leavers' accommodation to their former carers.

46. The Government in response points to the corporate parenting principles in clause 1 of the Bill. These, it says, will have an impact on decisions about where care leavers are accommodated in relation to their former carers, by requiring local authorities to have regard to matters such as acting in their best interests, securing best outcomes for them, and having stability in their lives and relationships.

47. The Government also points out that, since the Bill was introduced, its provisions relating to care leavers have been welcomed by Sir Martin Narey in his review of children in residential care.²⁵ The Government has also accepted his recommendation that further work be done to explore "Staying Close" options which would allow care leavers to remain close and in touch with their former care home, to complement the "Staying Put" provision in the Children and Families Act 2014 which allows care leavers in foster care to remain with their carers up to the age of 21.

48. The Government's "Staying Put" initiative was a welcome recognition of the need to do more for care leavers when they reached the age of 18, by enabling young adults to remain in their foster home, where they wished to do so. However, the arrangements did not apply to those in residential care (children's homes) as opposed to foster care. Sir Martin Narey's Report recommends that, subject to some satisfactory pilots, the Government now commit to introducing "Staying Close" for those leaving residential care, which would enable those reaching the age of 18 to live independently, in their own

24 UNCRC, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, June 2016, [para. 51\(f\)](#)

25 Department for Education, [Residential Care in England, Report of Sir Martin Narey's independent review of residential care](#), (July 2016)

flat, but very close to the residential home that they have left.²⁶ The Narey Report explains the compelling justification for enabling care leavers to “stay close” to the residential care setting that they leave at the age of 18:

We cannot allow young people, often just weeks from childhood, to be left to navigate life on their own. And nor should we sit by and allow them to drift home when that is patently not in their interests. When visiting homes, and when talking to staff and to care leavers, I was frequently struck by the resigned approach to a child becoming eighteen and the probability of that child gravitating to their parental home, despite that home having been at the centre of their earlier neglect. But that happens because—from the young person’s point of view—there is often little alternative. *Staying Close* would provide that alternative.

Children reaching adulthood and living in children’s homes are relatively small in number. But they are the most profoundly challenged, disadvantaged and often damaged children in the country. Offering them continued care and support alongside a growing independence, and in a way comparable to that experienced by eighteen year olds when they leave home for University, would be dramatically to improve their life chances.

49. We welcome the Government’s recognition of the need to do more to facilitate contact between care leavers and their former carers, and its acceptance of the recommendation that care leavers should be enabled to stay close to the residential home that they have left. The Staying Put initiative for children in foster care required statutory provision to be made in the Children and Families Act 2014. We recommend that the Government bring forward an amendment to the Bill to pave the way to the implementation of the recommendation it has accepted in Sir Martin Narey’s report, that would enable residential care leavers to remain close and in touch with their former care home.

Information sharing

50. The Bill provides for a new Child Safeguarding Practice Review Panel which is a welcome proposal from a human rights perspective as it should help to ensure that lessons are learnt nationally from serious case reviews, and therefore help prevent the repetition of mistakes which lead to children being harmed.

51. The Bill makes provision for information to be shared with the Panel,²⁷ and similar provision for information to be shared with local child safeguarding practice reviews²⁸ and with child death reviews.²⁹ In each case, a wide power is conferred on the relevant body to request a body or person to provide specified information; there is a duty to comply with the request; and that duty can be enforced by the requester applying to the High Court or the county court for an injunction. The safeguards on the face of the Bill

26 Department for Education, [Residential Care in England, Report of Sir Martin Narey’s independent review of residential care](#), (July 2016), recommendation 33, p65

27 [Children and Social Work Bill \[HL\]](#), Clause 14, inserting new section, 16D into the Children Act 2004

28 *Ibid.*, Clause 18, inserting new section, 16H into the Children Act 2004

29 *Ibid.*, Clause 24, inserting new section, 16N into the Children Act 2004

are that the information can only be requested for the purpose of enabling or assisting the performance of a function of the requesting body, and the information obtained can only be used for that purpose.

52. Information sharing is often beneficial and necessary to enable bodies such as the new Panel to perform its functions. However, it must always be defined with sufficient precision and accompanied by adequate safeguards to ensure that such information sharing only takes place where it is necessary and proportionate. The powers in the Bill to require the sharing of information are extremely broadly drafted and do not contain any of the sorts of safeguards that are found in other statutory provisions which authorise information sharing, such as in the Safeguarding of Vulnerable Groups Act 2006.³⁰

53. We therefore asked the Government whether the Information Commissioner's Office ("ICO") was consulted about the information sharing provision in the Bill before it was finalised, and, if not, whether it would now discuss with the ICO whether there should be more safeguards on the power in the Bill to require information sharing.

54. The Government says that it did not consult the Information Commissioner's Office about the provisions in the Bill because they are very similar to the existing provisions for the supply of information to Local Safeguarding Children Boards set out in the Children Act 2004, and the rationale for the information sharing has not changed substantially since then. The Government's view is also that no further safeguards are necessary. It argues that it is implicit in the Bill that the request for information must be both relevant and necessary to enable or assist one of the requesting body's functions, and the Secretary of State will give guidance which will include guidance about how to handle information which is subject to medical or legal privilege.

55. The information sharing provisions in the Bill appear to us to be very broad in scope and to provide no protection against the possible unnecessary disclosure of sensitive personal information about children, including information which might be subject to legal and medical privilege. *The Information Commissioner's Office is the expert on the safeguards that should accompany information sharing powers and we recommend that the Government now formally consult the Information Commissioner on the adequacy of the safeguards in the Bill and report back to Parliament on the Information Commissioner's views.*

Exemptions from and modifications of children's social care legislation

56. The Bill gives the Secretary of State the power to make regulations at the request of a local authority in England, exempting that authority from a requirement imposed by children's social care legislation, or modifying the way in which such a requirement applies to that authority.³¹ The purpose of the power is to enable local authorities to test different ways of working with a view to achieving better outcomes for children, or achieving the same outcomes more efficiently. Regulations can be made in relation to one or more local authorities in England and may include consequential modifications of children's social care legislation.

30 [Safeguarding Vulnerable Groups Act 2006](#), Schedule 3, para. 19

31 [Children and Social Work Bill \[HL\]](#), Clauses 29–33

57. Children’s social care legislation is broadly defined to include all the legislation conferring social services functions on local authorities, and the delegated legislation made under it, including the comprehensive Children Acts 1989 and 2004, social welfare legislation such as the National Assistance Act and the Chronically Sick and Disabled People Act 1970, mental health legislation, community care legislation and various other statutes which are the source of duties owed by local authorities to children.³²

58. The Government says that the rationale for the power is to encourage and reward innovative ways of improving children’s social care. In other words, it is intended to be a “piloting power”. However, concern has been expressed by a significant number of children’s organisations and experts working in the field, that such suspension of statutory duties by regulations may expose vulnerable children to harm. Together for Children, for example, a network of more than 40 children’s organisations and individual experts, regards the clauses as a grave and unprecedented threat to children’s legal rights. The Children’s Commissioner for Wales also expressed her concern about what she regards as the potential for certain fundamental rights and protections to be suspended for a period of up to 3 years without scrutiny.³³ She is concerned that this will lead to different levels of entitlement to services from one location to another, and will make children’s rights “more fractured and uncertain.”

59. The Delegated Powers and Regulatory Reform Committee considered the safeguards and limitations on the power which are provided in the Bill, including the requirement on both the local authority and the Secretary of State to consult before asking for or making the regulations, and the three year time limit on the duration of the regulations, subject to a further extension of three years if the Secretary of State lays the necessary report before Parliament. However, the Delegated Powers Committee remained concerned about the adequacy of those safeguards given the breadth of the power:³⁴

In this case the scope of the power is very broad in that it will allow changes to be made to a very wide range of children’s social care legislation. This reflects the purpose of the provision which is to enable local authorities to have as much flexibility as possible in coming forward with ideas for testing new ways of working. However, it means that the power will allow, in a very wide range of circumstances which cannot yet be predicted, the removal of statutory requirements which may themselves have been imposed with a view to ensuring that children are given certain protections, rights or benefits. **We consider that in order to ensure effective Parliamentary scrutiny the Secretary of State should be under a statutory duty, at the same time as laying the regulations before Parliament, to lay an explanatory statement which:**

- **set outs how the regulations are expected to achieve the statutory purpose set out in clause 15(1) [now clause 29(1)], and**

32 The legislation concerned includes all of the comprehensive list of legislation conferring social services functions on local authorities contained in Schedule 1 to the Local Authorities and Social Services Act 1970.

33 Letter from Sally Holland, Children’s Commissioner for Wales, to Rt Hon Harriet Harman MP, Chair of the Joint Committee on Human Rights, [dated 6 September 2016](#)

34 House of Lords, First Report of the Select Committee on Delegated Powers and Regulatory Reform, Session 2016–17, [HL Paper 13](#), paras 45–47

- **explains how the local authority will ensure that any affected children continue to receive the protections, rights or benefits conferred under the legislation which is being removed or modified.**

60. In the Government Response to the Delegated Powers Committee's Report, it accepted the Committee's recommendation that the Secretary of State should provide Parliament with such a report:³⁵ it was precisely the sort of information that the Government would expect a local authority to provide when making a request for an exemption or modification, and it accepts that Parliament would find such information helpful when considering orders under the power.

61. Many of the human rights of children which are recognised and protected in international human rights treaties are protected in national law by the legislation which these clauses empower the Secretary of State to suspend or modify. We therefore asked the Government what safeguards will be put in place to ensure that the exercise of this power to exempt from or modify statutory duties on local authorities does not risk leading to breaches of children's human rights under the ECHR and the UNCRC.

62. The Government in its response recognises that "it is essential to ensure that any of the exemptions and modifications which are put into effect do not have a detrimental effect on children's fundamental rights." As far as safeguards are concerned, it says that the consultation which is provided for in the Bill will help to ensure the right checks and safeguards are in place for each exception requested by a local authority. The Secretary of State will also consider any application as regards its impact on children's fundamental rights. Any exemptions will be regularly monitored, and independent evaluation of their progress will be commissioned. Any request for an extension at the end of the three year pilot period will need to be accompanied by an impact report on the first three years and will be subject to parliamentary approval. Any permanent changes to the law at the end of the testing period will be subject to parliamentary scrutiny. In addition, the Government said it will bring forward an amendment, in response to the Report of the Delegated Powers and Regulatory Reform Committee, requiring that all regulations be accompanied by a report setting out anticipated benefits and the protections to be put in place by local authorities.

63. The Government has now tabled this amendment for consideration at the Bill's Report stage. In a new clause on the parliamentary procedure to be followed when making regulations under the new power, the Secretary of State is required to lay, alongside the draft regulations, a report explaining how the regulations are expected to achieve the purpose of enabling a local authority to test different ways of working, and "confirming that the measures are not expected to have a detrimental impact on the welfare of any child and explaining any measures put in place to ensure that is the case."³⁶ We note that the Government's amendment refers to "the welfare of the child" rather than the "protections, rights or benefits" conferred on children by legislation, as recommended by the Delegated Powers and Regulatory Reform Committee, but we do not regard this as significant as it is clear that the purpose of the Government's amendment is to give effect to that Committee's clear recommendation.

35 Letter dated 4 July 2016 from Lord Nash to Baroness Fookes, Chair of the Delegated Powers and Regulatory Reform Committee, House of Lords, Second Report of the Select Committee on Delegated Powers and Regulatory Reform, Session 2016–17, [HL Paper 21](#), appendix 2.

36 [Children and Social Work Bill \[HL\]](#), Sub-clause (3) of new clause to be inserted after clause 30

64. The Government's amendments also strengthen the safeguards in the Bill by replacing the requirement that the Secretary of State consult certain persons before making regulations³⁷ with a requirement that an expert panel, including the Children's Commissioner and HM Chief Inspector of Education, Children's Services and Skills, be invited to give advice to the Secretary of State about the likely impact of the regulations on children and the adequacy of any measures that will be in place to monitor the impact on children.³⁸

65. We welcome the Government's recognition of the need for strong safeguards to ensure that this piloting power does not risk a reduction in the legal protection of children's fundamental rights. We welcome the Government amendment which will give effect to the recommendation of the Delegated Powers and Regulatory Reform Committee that the Secretary of State be under a duty to lay an explanatory statement alongside any regulations, explaining, amongst other things, how the local authority will ensure that the rights of affected children continue to be protected. We draw to the attention of both Houses the need for Parliament to remain vigilant and to scrutinise carefully any exercise of the new piloting power to ensure that the protection of children's fundamental rights is not diminished.

Social workers

66. Part 2 of the Bill enables the Secretary of State to introduce, by regulations, a new regulatory regime for social workers. That regime will include provisions concerning registration, discipline and fitness to practice, and the grounds on which decisions which affect a social worker's livelihood can be challenged. Such regimes of professional regulation clearly engage a number of human rights, including the right to practise one's profession which is a recognised right under Article 1 Protocol 1 to the ECHR and the right to a fair hearing in the determination of civil rights under Article 6(1) ECHR.

67. The Government has been widely criticised for the skeletal nature of this Part of the Bill, including by the House of Lords Constitution Committee. Concerns have been expressed about whether a regime introduced by regulations will receive adequate scrutiny for human rights compatibility.

68. We asked the Government to undertake to publish a full ECHR memorandum accompanying the new regulatory scheme when the regulations are published in due course, to enable the human rights compatibility of the new regime to be properly scrutinised by Parliament. The Government's response confirms that:

[...] we will continue to carefully consider the ECHR implications of our proposals and will set out these considerations in the context of our consultation on the draft regulations. When the regulations are laid the Explanatory Memorandum will include an assessment of the ECHR compatibility of the provisions.

69. We welcome the Government's undertaking to carefully consider the ECHR implications of its proposals, but this falls short of the undertaking we sought because the Explanatory Memorandum accompanying regulations only states the conclusion

37 [Children and Social Work Bill \[HL\]](#), clause 31(2) in the current Bill.

38 Proposed clause 31(2) to (3C).

of the Government’s assessment of their compatibility with the ECHR: it does not set out the detailed explanation of the basis on which the Government has reached its conclusion that the regulations are compatible.

70. *We recommend that the Government publish a full ECHR memorandum alongside the detailed regulations when they are laid so that they can be fully scrutinised for human rights compatibility.*

Unaccompanied refugee children

71. An amendment to the Bill has been tabled by Lord Dubs and the Lord Bishop of Durham, to be moved at the Bill’s Report stage,³⁹ which would require the Secretary of State to publish a strategy for the safeguarding of unaccompanied refugee children living in the UK and children who have been identified for resettlement in the UK under the so-called Dubs amendment to the Immigration Act 2016.

72. In our predecessor’s 2013 Report on the human rights of unaccompanied migrant children, the Committee recommended that the Government develop a clear strategy in relation to such children, in order to overcome the lack of joined up working which the Committee’s inquiry had revealed.⁴⁰

73. The UN Committee on the Rights of the Child, in its recent Concluding Observations on the UK, expressed its concern that :

- “Unaccompanied and separated refugee children within and outside of the State party face restrictions on family reunification”⁴¹
- “Asylum seeking, refugee and migrant children and their families face difficulties in accessing basic services, such as education and health care, and are at high risk of destitution.”⁴²

74. The UN Committee recommended that the UK:

- “Review its asylum policy in order to facilitate family reunion for unaccompanied and separated refugee children within and outside the State party, including through implementation of the EU Dublin III regulation;”⁴³ and
- “Provide sufficient support to migrant, refugee and asylum-seeking children to access basic services.”⁴⁴[...]

75. **We agree with our predecessor Committee about the need for a clear Government strategy in relation to unaccompanied migrant children. In our view, the recent concerns and recommendations of the UN Committee on the Rights of the Child**

39 [Children and Social Work Bill \[HL\]](#), inserting after clause 33 of the Bill a new clause, which would insert a new s.67A (Strategy for safeguarding unaccompanied refugee children) into the Immigration Act 2016.

40 Joint Committee on Human Rights, First Report of Session 2013–14, Human Rights of unaccompanied migrant children and young people in the UK, [HL Paper 9/HC196](#), paras 46–47

41 UNCR, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, June 2016, [para 75\(e\)](#)

42 *Ibid.*, [para 75\(f\)](#)

43 *Ibid.*, [para 76\(e\)](#)

44 UNCR, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, June 2016, [para 75\(f\)](#) para 76(f)

demonstrate the urgency of such a strategy. *We support the amendment tabled by Lord Dubs and the Lord Bishop of Durham and we recommend that the Government go further by bringing forward clear proposals for drawing up a wider strategy in relation to all unaccompanied migrant children, as recommended by our predecessor Committee in 2013.*

2 Policing and Crime Bill

Background

76. The Queen’s Speech of 27 May 2015 included an announcement that the Government would bring forward a Policing and Crime Bill. The Government indicated that this wide-ranging Bill would have a number of elements and would address, amongst other things, pre-charge bail; the treatment of 17 year olds under the *Police and Criminal Evidence Act*; mental health and policing; changes to the police disciplinary system; and the reform of the Police Federation.

77. The Bill was introduced on 10 February 2016.⁴⁵ The Bill received its second reading on 7 March 2016⁴⁶, and there were seven sittings of the Public Bill Committee, including two public evidence sessions⁴⁷ and Report Stage commenced on 26 April. The House of Commons agreed a carry-over motion for this Bill on 7 March 2016 which meant that consideration of the Bill resumed in the 2016–17 session. The Bill, has now completed its Commons stages and, following Second Reading in the House of Lords on 18 July 2016⁴⁸, commenced Committee Stage in the House of Lords on Wednesday 14 September.⁴⁹

78. We wrote to the Secretary of State on 15 June 2016, posing a number of questions about the Bill.⁵⁰ In particular, we identified two particular concerns—namely proposed amendments to the Mental Health Act 1983 under Part 4 of the Bill and certain requirements to confirm nationality under Part 9.

79. In relation to the first issue, we questioned whether a person taken to a ‘place of safety’⁵¹ by the Police under s 135 or 136 of the 1983 Act should have the right to an independent mental health advocate, or a right to access to a relative, guardian or other appropriate adult. On the second issue, we noted the risk that the provision contained in Part 9 of the Bill on requirements to confirm nationality could have a differential impact on BAME UK citizens. We also questioned whether a person asked to produce a passport or other nationality document should instead be entitled to supply documentation sufficient to demonstrate an entitlement to such a document.

80. Mike Penning MP, then Minister for Policing and Criminal Justice, replied on 1 July 2016.⁵²

45 See *Policing and Crime Bill*, Briefing Paper [CBP-7499](#), House of Commons Library, March 2016, which provides an analysis of the Bill as originally introduced in the Commons and this detailed information is not rehearsed here.

46 HC Deb, 7 March 2016, [col 37](#)

47 The Library produced a second briefing note, *Policing and Crime Bill: Committee Stage Report*, Briefing Paper [07563](#), House of Commons Library on 22 April 2016.

48 HL Deb, 18 July 2016, [col438](#)

49 *Policing and Crime Bill: Briefing for Lords Stages*, Lords Library Note, [LLN-2016-0035](#), July 2016

50 Letter from Rt Hon Harriet Harman MP, Chair, Joint Committee on Human Rights, to Rt Hon Theresa May MP, then Secretary of State for the Home Department, [dated 15 June 2016](#)

51 If you are in a public place and it appears to a police officer that you are “suffering from mental disorder” and are “in need of immediate care or control”, he or she can take you to a place of safety if it’s felt to be in your interests or necessary to protect others. You will be kept at the place of safety, so that you can be examined by a doctor and interviewed by an approved mental health professional and any necessary arrangements can be made for your treatment or care.

52 Letter from Rt Hon Mike Penning MP, Minister for State for Policing, Fire, Criminal Justice and Victims, to Rt Hon Harriet Harman MP, Chair, [1 July 2016](#)

Detention in a place of safety

81. On the Mental Health Act issue, he indicated, amongst other things, that:

The purpose of the intervention and detention under sections 135 and 136 of the 1983 Act is different in nature to many of the other powers given to the authorities under that Act. The powers are primarily for the purpose of conducting an initial mental health assessment of the person and determining the most appropriate course of action as a consequence [...] It is important, therefore, that we do not inadvertently build unintended and unnecessary delay and bureaucracy into this process or as a consequence of having to await the arrival of a formal advocate or independent representative.

82. His letter added that:

It is open for a person subject to section 135 or 136 to request their own legal representation or the presence of a relative or a friend if they wish and—subject to safety considerations—there is no reason why such wishes should not normally be accommodated. [...] Where it is deemed most suitable in all the circumstances to use a private residence as a place of safety, we would also expect that police and health professionals would seek to involve any family or friends in helping to reassure and calm the person, pending a formal assessment.

83. Amendments on this issue were tabled and debated at Committee Stage in the House of Commons and were tabled for debate at Committee Stage in the House of Lords.⁵³

84. We believe that additional safeguards are required to ensure that a person detained in a place of safety under s 135 or 136 of the Mental Health Act 1983 should have access to an ‘appropriate adult’, particularly in circumstances where they are detained in their own home. *In those circumstances, we propose an amendment to the Bill to make such provision, the text of which is contained below:*

After Clause 81, insert the following new Clause:

Access to an appropriate adult

(1) A person detained in a place of safety under section 135 or 136 of the Mental Health Act 1983 shall have the right to an appropriate adult

(2) For the purposes of subsection 1 “right to” means:

(i) all detainees must be informed that they may at any time consult and communicate privately with an appropriate adult, whether in person, in writing or by telephone, and that such advice is available.

(3) For the purposes of subsection 1, “appropriate adult” means:

⁵³ An amendment (new Clause 12) requiring access to an independent mental health advocate) was tabled at Committee Stage in the House of Commons and was subject to debate ([PBC Deb 12 April 2016 c236 et seq.](#) The NGO, MIND, has proposed a (perhaps less onerous) amendment which would entitle persons to access to an ‘appropriate adult’. This amendment has been tabled by Baroness Walmsley as a new clause ([Amendment 193](#)) and is similar to the amendment that we propose).

- (i) a relative, guardian or other person responsible for the detained person's care;
- (ii) someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or employed by the police; or
- (iii) some other responsible adult aged 18 or over who is not a police officer or employed by the police.

Requirement to produce nationality document

85. On the question of requiring an individual arrested for an offence to state their nationality (**Clause 140**), the Minister stated that:

Before deciding to issue a notice requiring a nationality document to be produced, as a matter of operational best practice, officers should check whether or not there is an immigration interest with Home Office Immigration Enforcement. If, having undertaken these checks, it is confirmed that the individual is not a UK national (or it is suspected the person may not be), it is a proportionate response to require the production of a document in order to properly establish identity. Should a UK national not possess a passport but are able to produce evidence (documentary or otherwise) that they are entitled to one under the terms of published guidance, it is reasonable that officers should take that into account. We do not consider it necessary that such eventualities are set out on the face of the Bill, but will instead issue guidance to officers in that regard.

86. If the Government accepts that alternative documentation may be required in circumstances where an individual does not possess a passport or driving licence, it is not clear why this fact should not be stated on the face of the Bill.

87. **Where a UK citizen is asked to provide a nationality document, and is not in possession of such a document, it should instead be possible for him or her to provide documentation sufficient that such a document would be issued by the passport authority. *This safeguard should be reflected on the face of the Bill rather than as operational guidance. Accordingly, we propose an amendment in the following terms:***

Requirement to produce nationality document

Clause 140 (7)

At page 154, line 17, after the words “nationality or citizenship” add the words “, or where a person is not in possession of such a document, such alternative documents sufficient that such a document would normally be issued by the relevant authorities”.

3 Cultural Property (Armed Conflicts) Bill

88. The Cultural Property (Armed Conflicts) Bill is designed to enable the United Kingdom to implement the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 and the Protocols to that Convention of 1954 and 1999.⁵⁴

89. We called for evidence on the Bill and our Deputy Legal Adviser met the Bill team. Subsequently, we wrote to the Government on 29 June.⁵⁵ We raised two issues of concern. The first related to the maximum penalty for ancillary offences under Part 2 of the Bill (**Clause 4**).⁵⁶ This had been set at 30 years which appeared potentially disproportionate. The second related to an immunity from seizure provision which was worded in such a way that it purported to give objects protected under it complete immunity from seizure under any other legislation or rule of law (**Clause 28**). On the latter point, we pointed out that a similar provision in the Tribunals, Courts and Enforcement Act 2007 had been made subject to both international law and EU obligations. This point was also raised in correspondence by the House of Lords Constitution Committee.⁵⁷

90. Following the Government's response on 8 July⁵⁸, we decided not to issue a report on the Bill; but instead proposed two amendments at Report Stage in the House of Lords. These were tabled by Lord Woolf, Baroness Hamwee and Lord Brown of Eaton-under-Heywood (a former Supreme Court judge who is not a member of the Joint Committee on Human Rights).

91. The amendments were considered on 6 September 2016⁵⁹ and were debated, but eventually withdrawn. During the course of the debate, Lord Brown observed (in relation to the question of maximum sentences) that: "it is a pity that Parliament looks by this to be a little out of touch. The maximum penalties cease to have quite the same conviction if they lose perspective."⁶⁰

92. We draw the attention of both Houses to the concerns we raised about Clauses 4 and 28 of the Cultural Property (Armed Conflicts) Bill. We regret the Government's reluctance to consider amendments to the Bill on these specific points notwithstanding the criticism that they attracted from a number of quarters during Report Stage in the House of Lords.

54 See *Cultural Property (Armed Conflicts) Bill [HL]: Briefing for Lords Stages*, Lords Library Note, [LLN-2016-0029](#), May 2016

55 Letter from Rt Hon Harriet Harman MP, Chair, to Baroness Neville-Rolfe DBE, CMG, Parliamentary Under Secretary of State, [June 2016](#)

56 In relation to breaches of Article 15 of Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

57 Letter from Rt Hon the Lord Lang of Monkton, DL, Chair, House of Lords Constitution Committee, to Baroness Neville-Rolfe DBE, CMG, [June 2016](#)

58 Letter from Baroness Neville-Rolfe DBE, CMG, Parliamentary Under Secretary of State, to Chair, [July 2016](#)

59 HL Deb, 6 September 2016, [cols948-952 and 954-957](#)

60 HL Deb, 6 September 2016, [col951](#)

Conclusions and recommendations

Children and Social Work Bill

Information provided by the Government

1. We thank the Department for Education for providing a full ECHR Memorandum and a full UNCRC impact assessment, which have both helped us in our human rights scrutiny of the Bill. We remind Departments that we expect such memoranda to be published at the same time as the Bill is introduced, to enable us and other Committees to begin our scrutiny of the Bill as early as possible and to report in time to inform debates on the Bill as it proceeds through both Houses. (Paragraph 8)
2. We remind the Government of the importance of replying promptly to our inquiries about Bills to enable us to perform our human rights scrutiny role in time to inform parliamentary debate. (Paragraph 11)

Human rights enhancing aspects of the Bill

3. We welcome those aspects of the Bill which enhance protection for children's rights and in particular those which give effect to recommendations recently made by the UN Committee on the Rights of the Child in its Concluding Observations on the UK. In our Report, however, we focus on areas where the Bill could be improved from the point of view of children's rights. (Paragraph 17)

Giving better effect to children's rights in England

4. We welcome the Department's acknowledgment that more needs to be done to ensure more systematic consideration of the impact of laws and policies on children's rights. We have considered the arguments and the evidence for and against introducing a statutory duty on public authorities in England requiring them to have due regard to the rights of children in the UNCRC in the exercise of their functions relating to children, equivalent to the duties already introduced in Wales and Scotland. Having taken into account the practical implications for local authorities, in our view the case is made out. We recommend that Parliament takes the opportunity presented by this Bill to enhance the protection of children's rights in England by introducing such a duty. The following amendment would give effect to this recommendation within the scope of the current Bill: *We recommend that Parliament takes the opportunity presented by this Bill to enhance the protection of children's rights in England by introducing such a duty* The following amendment would give effect to this recommendation within the scope of the current Bill

In the Children and Social Work Bill, Part 1, Chapter 2 (Other provision relating to children in England), before clause 10 insert:

New Clause

Duty to have due regard to United Nations Convention on the Rights of the Child

- (1) A public authority must, in the exercise of its functions relating to safeguarding and the welfare of children, have due regard to the UN Convention on the Rights of the Child.
- (2) For the purposes of this section,
 - (a) ‘public authority’ has the same meaning as in s. 6 of the Human Rights Act 1998, and
 - (b) ‘United Nations Convention on the Rights of the Child’ has the same meaning as in s. 2A(2) of the Children Act 2004. (Paragraph 30)
5. We welcome the introduction of corporate parenting principles as having the potential to enhance the protection of the rights of looked after children, including their right to have their best interests treated as a primary consideration and their right to health and well-being. (Paragraph 32)
6. The new statutory duty on public authorities in England that we recommend above, to have due regard to the rights of children in the UNCRC in the exercise of functions relating to children, would apply to local authorities when acting as corporate parents, and there would therefore be no need to insert any express reference to the UNCRC in the list of corporate parenting principles. However, Parliament may wish to consider such an amendment in the event that the more general duty does not find favour. (Paragraph 35)

Support for care leavers

7. We welcome this provision as a human rights enhancing measure. The UN Committee on the Rights of the Child recently expressed concern about children leaving foster care or residential care not receiving proper support and counselling, including on their future plans, and recommended that the UK “provide sufficient support for care leavers, including for accommodation, employment or further education.” The provision in clause 3 of the Bill goes some way to meeting this recommendation. (Paragraph 37)

A right to request or a duty to offer?

8. In our view the right to support would have been more practically effective if the Bill had imposed a duty on local authorities to offer advice and support directly to care leavers, rather than merely to take steps to inform them of their right to make a request for such support. This would still allow for a tailored approach, as not all care leavers will take up the offer, and local authorities will not therefore be required to provide the same service to all care leavers. We welcome the Government’s amendments to clause 3 of the Bill, tabled for consideration at Report stage, which remove all references to the further advice and support being available “on request” and impose instead a duty on the local authority to offer such advice and support. These amendments meet our concern that the additional support might not be effective in practice because care leavers may not be aware of their entitlement. (Paragraph 41)

9. We welcome the Government's recognition of the additional burden that will be placed on local authorities and its clear undertaking that "DfE will provide additional funding for this." However, the Government's response also states that "if introduced incrementally, this would reduce required funding in the first years of implementation", without explaining what it means by introducing the change incrementally. Having decided to make such further advice and support available, it would not be fair to make it available to some care leavers but not to others. *We recommend that the Government clarify what it has in mind when it refers to the possibility of introducing the change "incrementally."* (Paragraph 43)
10. We welcome the Government's recognition of the need to do more to facilitate contact between care leavers and their former carers, and its acceptance of the recommendation that care leavers should be enabled to stay close to the residential home that they have left. The Staying Put initiative for children in foster care required statutory provision to be made in the Children and Families Act 2014. *We recommend that the Government bring forward an amendment to the Bill to pave the way to the implementation of the recommendation it has accepted in Sir Martin Narey's report, that would enable residential care leavers to remain close and in touch with their former care home.* (Paragraph 49)

Information sharing

11. The information sharing provisions in the Bill appear to us to be very broad in scope and to provide no protection against the possible unnecessary disclosure of sensitive personal information about children, including information which might be subject to legal and medical privilege. *The Information Commissioner's Office is the expert on the safeguards that should accompany information sharing powers and we recommend that the Government now formally consult the Information Commissioner on the adequacy of the safeguards in the Bill and report back to Parliament on the Information Commissioner's views.* (Paragraph 55)

Exemptions from and modifications of children's social care legislation

12. We welcome the Government's recognition of the need for strong safeguards to ensure that this piloting power does not risk a reduction in the legal protection of children's fundamental rights. We welcome the Government amendment which will give effect to the recommendation of the Delegated Powers and Regulatory Reform Committee that the Secretary of State be under a duty to lay an explanatory statement alongside any regulations, explaining, amongst other things, how the local authority will ensure that the rights of affected children continue to be protected. We draw to the attention of both Houses the need for Parliament to remain vigilant and to scrutinise carefully any exercise of the new piloting power to ensure that the protection of children's fundamental rights is not diminished. (Paragraph 65)

Social workers

13. We welcome the Government's undertaking to carefully consider the ECHR implications of its proposals, but this falls short of the undertaking we sought because the Explanatory Memorandum accompanying regulations only states the

conclusion of the Government’s assessment of their compatibility with the ECHR: it does not set out the detailed explanation of the basis on which the Government has reached its conclusion that the regulations are compatible. (Paragraph 69)

14. *We recommend that the Government publish a full ECHR memorandum alongside the detailed regulations when they are laid so that they can be fully scrutinised for human rights compatibility.* (Paragraph 70)

Unaccompanied refugee children

15. We agree with our predecessor Committee about the need for a clear Government strategy in relation to unaccompanied migrant children. In our view, the recent concerns and recommendations of the UN Committee on the Rights of the Child demonstrate the urgency of such a strategy. *We support the amendment tabled by Lord Dubs and the Lord Bishop of Durham and we recommend that the Government go further by bringing forward clear proposals for drawing up a wider strategy in relation to all unaccompanied migrant children, as recommended by our predecessor Committee in 2013.* (Paragraph 75)

Policing and Crime Bill

Detention in a place of safety

16. We believe that additional safeguards are required to ensure that a person detained in a place of safety under s 135 or 136 of the Mental Health Act 1983 should have access to an ‘appropriate adult’, particularly in circumstances where they are detained in their own home. *In those circumstances, we propose an amendment to the Bill to make such provision, the text of which is contained below*

After Clause 81, insert the following new Clause:

Access to an appropriate adult

(1) A person detained in a place of safety under section 135 or 136 of the Mental Health Act 1983 shall have the right to an appropriate adult

(2) For the purposes of subsection 1 “right to” means:

(i) all detainees must be informed that they may at any time consult and communicate privately with an appropriate adult, whether in person, in writing or by telephone, and that such advice is available.

(3) For the purposes of subsection 1, “appropriate adult” means:

- (i) a relative, guardian or other person responsible for the detained person’s care;
- (ii) someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or employed by the police; or
- (iii) some other responsible adult aged 18 or over who is not a police officer or employed by the police. (Paragraph 84)

Requirement to produce nationality document

17. Where a UK citizen is asked to provide a nationality document, and is not in possession of such a document, it should instead be possible for him or her to provide documentation sufficient that such a document would be issued by the passport authority. *This safeguard should be reflected on the face of the Bill rather than as operational guidance. Accordingly, we propose an amendment in the following terms*

Requirement to produce nationality document

Clause 140 (7)

At page 154, line 17, after the words “nationality or citizenship” add the words “, or where a person is not in possession of such a document, such alternative documents sufficient that such a document would normally be issued by the relevant authorities”. (Paragraph 88)

Cultural Property (Armed Conflicts) Bill

18. We draw the attention of both Houses to the concerns we raised about Clauses 4 and 28 of the Cultural Property (Armed Conflicts) Bill. We regret the Government’s reluctance to consider amendments to the Bill on these specific points notwithstanding the criticism that they attracted from a number of quarters during Report Stage in the House of Lords. (Paragraph 92)

Formal Minutes

Wednesday 12 October 2016

Members present:

Ms Harriet Harman MP, in the Chair

Fiona Bruce MP

Baroness Hamwee

Ms Karen Buck MP

Lord Henley

Amanda Solloway MP

Baroness Lawrence of Clarendon

Lord Trimble

Draft Report (*Legislative Scrutiny: (1) Children and Social Work Bill; (2) Policing and Crime Bill; (3) Cultural Property (Armed Conflicts) Bill*), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 92 read and agreed to.

Resolved, That the Report be the Third Report of the Committee to the House.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

[The Committee adjourned.]

Published written evidence

Children and Social Work Bill

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

CSW numbers are generated by the evidence processing system and so may be incomplete.

- 1 Equality and Human Rights Commission ([CSW0002](#))

Policing and Crime Bill

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

PCJ numbers are generated by the evidence processing system and so may be incomplete.

- 1 Essex Historic Military Vehicle Association ([PCJ0001](#))
- 2 Inclusion London ([PCJ0003](#))
- 3 The Children's Society ([PCJ0002](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2015–16

First Report	Legislative Scrutiny: Trade Union Bill	HL Paper 92/HC 630
Second Report	The Government's policy on the use of drones for targeted killing	HL Paper 141/HC 574
Third Report	Appointment of the Chair of the Equality and Human Rights Commission	HL Paper 145/HC 648

Session 2016–17

First Report	Legislative Scrutiny: Investigatory Powers Bill	HL Paper 6/HC 104
Second Report	Counter-Extremism	HL Paper 39/HC 105