

*These notes refer to the Children and Young Persons Bill [HL]
as introduced in the House of Lords on 14th November 2007 [HL Bill 8]*

CHILDREN AND YOUNG PERSONS BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Children and Young Persons Bill [HL] as introduced in the House of Lords on 14th November 2007. They have been prepared by the Department for Children, Schools and Families in order to assist the reader in understanding the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. In June 2007 the Government published a White Paper, *Care Matters: Time for Change*. This set out the Government's plans to improve the outcomes of children and young people in care. The White Paper built on the proposals in the Green Paper *Care Matters: Transforming the Lives of Children and Young People in Care* which was published for consultation in November 2006 and the conclusions of four working groups established to investigate best practice in supporting those in care. The Green Paper and a summary of the responses to it can be found at www.dcsf.gov.uk/consultations and the White Paper and working group reports at www.dcsf.gov.uk/publications/timeforchange/. The White Paper included a commitment to amend the legislative and regulatory framework around children in care including amendments to statutory guidance and National Minimum Standards.

4. The purpose of the Bill is to reform the statutory framework for the care system by implementing the proposals in the White Paper that require primary legislation. This forms part of the Government's programme to ensure that children and young persons receive high quality care and support. The Bill also includes provisions in relation to private fostering, child death notification to Local Safeguarding Children's Boards, the powers

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of the Secretary of State to conduct research and applications for the discharge of Emergency Protection Orders.

5. In summary, the Bill:

- makes provision to enable local authorities to delegate local authority functions in relation to looked after children to providers of social work services and (following the pilot stage) to enable regulation of providers and to require them to be registered under Part 2 of the Care Standards Act 2000;
- prevents local authorities placing looked after children outside their local authority area unless provision consistent with a child's welfare is unavailable within the local authority's area;
- requires local authorities to place children in accommodation that is near to a school at which the child is a registered pupil;
- prevents local authorities moving a looked after child from a placement with a local authority foster parent or an appropriate children's home to other arrangements, unless they have decided to do so in consequence of a statutory review of the child's case;
- amends the duties of local authorities in relation to the appointment of the Independent Reviewing Officer (IRO); adds to the functions of the IRO; and provides the Secretary of State with powers to establish a new national IRO service independent of local authorities;
- makes explicit the duty on local authorities to appoint a person to visit all looked after children and extends the duty to those in youth custody and long term residential placements;
- extends the duty on local authorities to appoint an independent person to visit, befriend and advise any looked after child if it is in the child's interests;
- places a duty on governing bodies of maintained schools to appoint a member of staff to be responsible for promoting the educational achievement of registered pupils at the school who are looked after;
- extends the duty on local authorities to appoint a personal adviser and keep the pathway plan under regular review to young people who are former relevant children and who start or resume a programme of education or training after the age of 21 but under the age of 25 years;

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- requires local authorities to pay a bursary to a former relevant child (i.e. a care leaver) who goes on to Higher Education;
- extends the powers of local authorities to make cash payments to children in need and their families;
- makes provision to enable registration authorities to issue compliance notices to children's home providers who are failing to meet required standards and to impose a notice preventing new admissions to establishments where this is deemed appropriate;
- amends the procedures around the reporting of child deaths to create a statutory duty for registrars to notify local safeguarding children boards;
- creates an independent review mechanism to allow for review of decisions by fostering service providers that a prospective or existing foster carer is not suitable to foster (similar to that which currently exists for prospective adopters);
- extends by three years the period within which a registration scheme may be established for private fostering;
- extends the rights of relatives who are entitled to apply for a residence order or special guardianship order without leave of the court to those with whom the child has lived for a continuous period of one year; and ensures that where a court makes a residence order the order will normally continue until the child reaches the age of 18;
- extends the powers of the Secretary of State to carry out research on the functions of local authorities to functions added under recent legislation, in particular the Adoption and Children Act 2002, the Children Act 2004 and the Children and Young Persons Act 2008; and
- repeals section 45(9) of the 1989 Act to remove the 72-hour moratorium on the court's powers to hear an application to discharge an Emergency Protection Order.

TERRITORIAL EXTENT

6. The Bill extends to England and Wales, with the exception of the provision to enable the Chief Inspector to issue a compliance notice where they have concerns that standards in residential care settings are not being met, which applies to England only. The Bill does not extend to Scotland and Northern Ireland.

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7. The Bill confers various powers to make subordinate legislation. In general, these are exercisable by the Secretary of State, in relation to England and the Welsh Ministers, in relation to Wales.

THE BILL

8. The Bill is in 5 parts. Part 1 (clauses 1 to 6) deal with arrangements for the provision of social work services for children and young persons.

9. Part 2 (clauses 7 to 28) of the Bill principally amends Part 3 of the Children Act 1989. It concerns the duties of local authorities when providing accommodation for children they look after; the appointment and functions of IROs and provides a power for the establishment of a national IRO service. It provides for arrangements to be made for visits by local authority representatives to children and young persons living away from home; and for the appointment of independent visitors to looked after children. In addition it imposes a duty on governing bodies of maintained schools to designate a member of staff for looked after children and extends the entitlements of former relevant children to the appointment of a personal adviser and other assistance in connection with education or training. It amends the Care Standards Act 2000 to make provision for the enforcement of care standards in children's homes and other settings. It enables registrars to provide information to local safeguarding children boards regarding child deaths. It extends the powers of local authorities to make cash payments to children in need and their families and the powers of the Secretary of State to carry out research on the functions of local authorities. It removes restrictions on the court's powers to hear an application to discharge an Emergency Protection Order.

10. Part 3 (clauses 29 to 31) amends Schedule 2 of the 1989 Act, to allow for an independent review of decisions on the suitability of local authority foster parents. It amends the existing powers in section 12 of the Adoption and Children Act 2002 that enable regulations to provide for the independent review of qualifying determinations and extends the period allowed for making regulations to establish a registration scheme for private fostering.

11. Part 4 (clauses 32 to 34) makes amendments to part 1 of the Children Act 1989 in relation to residence orders and special guardianship orders.

12. Part 5 contains general and final provisions.

13. There is one Schedule that deals with repeals.

14. The Bill amends the public law framework for safeguarding and promoting children's welfare; that is, the services to be provided to support children and their families and the procedures to protect children who are at risk of suffering harm. The key legislation to be amended by this Bill is the 1989 Act. Important amendments have previously been made to Parts 3-5 in particular by the Children (Leaving Care) Act 2000, the Adoption and Children Act 2002 and the Children Act 2004. The Bill will also amend the Care Standards Act 2000

and the Adoption and Children Act 2002.

COMMENTARY ON CLAUSES

15. Unless otherwise stated, in these notes, the “appropriate national authority” means the Secretary of State for Children, Schools and Families in relation to England and the Welsh Ministers in relation to Wales. The “registration authority” refers to the HM Chief Inspector for Education, Children’s Services and Skills (the Chief Inspector) in England and, when applied to Wales, the Welsh Ministers. The “1989 Act” refers to the Children Act 1989.

Part 1 – Delivery of Social Work Services for Children and Young Persons (Clauses 1 to 6)

16. *Clause 1* enables local authorities to enter into arrangements with a body corporate (referred to in this Part as a “provider of social work services”) for the discharge by that body of some or all of the authority’s social services functions in relation to:

- a. individual children who are looked after by the authority; or
- b. former relevant children (as defined in section 23C of the 1989 Act)

referred to in *subsection (2)* as relevant care functions. Social services functions are defined in section 1A of the Local Authority Social Services Act 1970 (1970 Act). *Subsection 5* provides that the arrangements may make provision about the continuing exercise of the local authority functions where the child ceases to be looked after by the local authority. *Subsection (6)* enables the appropriate national authority to make regulations specifying functions which are or are not to be treated as relevant care functions. These powers are subject to affirmative resolution, i.e. before the powers can be exercised, a draft Order must be laid before both Houses of Parliament and expressly approved before it can be “made” (signed) by the Secretary of State. This contrasts with the more common “negative” procedure for exercising delegated powers that permits the statutory instrument to be laid before both Houses after it has been “made”; the instrument is subject to revocation if a resolution for annulment is passed within 40 days.

17. A provider of social work services cannot be a local authority (*subsection (3)(a)*) and regulations may make further provision about the bodies corporate which may, or may not, be providers of social work services (*subsection (7)*). This power is subject to affirmative resolution.

18. In addition the appropriate national authority may by regulations provide that arrangements may be entered into for no less than a prescribed minimum period or for more than a prescribed maximum period.

19. *Clause 2* places restrictions on the functions that may be the subject of arrangements under this Part. The excluded functions (set out in *subsection (2)*) are functions in relation to the appointment of independent reviewing officers and the local authority’s functions as an

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adoption agency (unless the provider of social work services is also a registered adoption society). The intention is that independent reviewing officers will be one of the mechanisms by which local authorities quality assure the work carried out by providers of social work services. Making arrangements for adoption are excluded as the intention is that providers of social work services are to focus on the provision of support to looked after children, particularly those who are likely to remain in the long term care of the authority.

20. *Subsection (5)* provides that a local authority must not enter into arrangements under Part 1 unless it is satisfied that the functions will be discharged by, or under the supervision of, registered social workers.

21. The power to enter into an arrangement with a provider of social work services is to be a social services function (clause 5 amends Schedule 1 to the 1970 Act). This means that in making arrangements under this Part the local authority must act under any general guidance of the appropriate national authority issued under section 7 of the 1970 Act and comply with any directions issued under section 7A of that Act.

22. *Clause 3* provides that any acts or omissions of a provider of social work services or their employees are to be treated as the acts and omissions of the local authority. *Subsection (2)* provides that this does not affect the rights and liabilities of the local authority and the provider, does not apply to criminal offences and does not prevent any civil proceedings being brought against the provider. This leaves in place the liability of the provider and that the local authority will in addition be equally and jointly liable for the acts of the provider. For example in tort the provider is liable and the local authority is deemed liable under clause 3.

23. *Clause 6* enables the piloting of arrangements under this Part for a period of up to five years. The intention is to pilot the arrangements in a number of local authorities. The pilots will be evaluated and subject to that evaluation the power may be extended to all local authorities. In that event all providers of social work services will be regulated as agencies under the Care Standards Act 2000 and subject to registration and inspection by the Chief Inspector for Education, Children's Services and Skills. *Subsection (3)* provides that sections 1 to 5 cease to have effect if the piloting period comes to an end after 5 years without clause 4 having been commenced. Subsections (4) and (5) provide that if clause 1 is not commenced within a period of 5 years then sections 1 to 5 cease to have effect in relation to England or, as the case may be, Wales.

Part 2 - Functions in Relation to Children and Young Persons

Accommodation

24. Every local authority should have a plan for the future care of each of the children it looks after. Care plans should describe the child's needs, set out the services that will be provided to meet those needs and the local authority's long term plan for the child. The care plan should include amongst other things:

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- the child's identified needs;
- how those needs might be met;
- proposed placement (type and details);
- other services to be provided to the child or family either by the local authority or other agencies;
- the health plan;
- the Personal Education Plan; and
- dates of scheduled reviews of the care plan.

25. At every stage of care planning, where decisions are taken that will affect the child's life, the wishes and feelings of the child must be ascertained and given due consideration, in addition to the wishes and feelings of their parents and carers (section 22 of the 1989 Act). Due consideration must also be given to the child's religious persuasion, racial origin and cultural and linguistic background. Care plans must be reviewed in accordance with regulations i.e. within 4 weeks of the date on which the child begins to be looked after, the second review must be within 3 months after that date, and subsequently at no more than 6 monthly intervals.

26. The content of care plans and arrangements for reviews is determined by a combination of regulations. In England, these are the Arrangement for Placement of Children (General) Regulations 1991 and the Review of Children's Cases Regulations 1991, made under the 1989 Act. In relation to Wales, the Placement of Children (Wales) Regulations 2007 and the Review of Children's Cases (Wales) Regulations 2007 apply.

27. Amendments to arrangements for care planning and review are made by the provisions in Part 2 of the Bill.

Clause 7: Support for children placed with family and friends

28. This clause replaces section 23(6) of the 1989 Act with new subsections (6A) to (6C). This is intended to improve clarity of interpretation as a result of recent court judgements. It restates the duty on the local authority to place a child who is voluntarily accommodated with a relative or other person connected with them, unless that would be impracticable or inconsistent with the child's welfare. The effect of subsection 6B is that such a placement in relation to a child accommodated under section 20 of the 1989 Act is that the child remains looked after unless the placement is with a parent (or another person who has parental responsibility).

Clause 8: Provision of accommodation etc.

29. This clause replaces section 23(7) of the 1989 Act. It imposes a new duty on local authorities to place children in accommodation that is within their local authority area except where accommodation cannot be provided within area that is consistent with the child's welfare. Examples of cases where it might not be possible to meet the welfare requirement by placing the child "in area" include those where it is necessary for a child to be placed at a

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distance from their family for safeguarding/child protection reasons, or where a child with complex health needs requires highly specialist provision that is not available locally.

30. Nationally 2,300 children of the 5,200 children in children's homes, and 12,700 of the 35,300 children in foster placements (where the foster carers are not relatives or friends) are accommodated outside of the area of the local authority that placed them. Further information is available in: Children Looked After in England (including adoption and care leavers) year ending 31st March 2007 statistical first release published on the 20th September 2007 available at: <http://www.dfes.gov.uk/rsgateway/DB/SFR/s000741/index.shtml>

31. *Subsection (7B)* enables the appropriate national authority to make regulations with which local authorities must comply before placing a child in accommodation out of their area. In addition where an immediate placement is required due to the child's welfare needs, the regulations may also specify a time frame within which the local authority must comply with these requirements.

32. *Subsections (7C) to (7E)* replace section 23(7) of the 1989 Act, requiring accommodation to be provided near to a child's home and for siblings to be placed together where reasonably practicable and consistent with the welfare of the child.

Clause 9: Provision of accommodation etc.

33. This clause amends section 23 of the 1989 Act to the effect that local authorities are required to make arrangements for a child they are looking after to be accommodated near to the school at which the child is a registered pupil, unless doing so would not be reasonably practicable or consistent with his welfare.

34. The intention is that care placement decisions should not normally mean that the child has to change school; and that school moves should normally only result from a change to the child's educational needs, such as a change in their assessed special educational needs.

35. The provision builds on the requirement (in section 22(3A) of the 1989 Act) for local authorities to promote the educational achievement of children they look after, which came into force in July 2005 in relation to England and in October 2006 in relation to Wales. Section 22(3A) places a duty on local authorities to "give particular attention to the educational implications of any decision about the welfare of any child they are looking after" (Explanatory Notes to the Children Act 2004, paragraph 227).

36. In addition to this general new requirement, for children in school years 10 and 11 (Key Stage 4) the circumstances must be exceptional to justify a care placement that is not near the child's school. This is because this stage is critical to children's academic attainment as they will typically be studying a course leading to a particular qualification, such as GCSEs or equivalent. Evidence suggests that disruptions to education are likely to have a greater impact on educational attainment during this period.

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37. Examples of “exceptional circumstances” that might justify accommodating a child so far from his school that it becomes impractical to maintain the school placement might include, for example, placement with prospective adopters or a move for child protection purposes.

Clause 10: Review of child’s case etc.

38. This clause amends section 23 of the 1989 Act. It introduces a procedural requirement in a case where the local authority is considering a particular change to the arrangements it has made for the accommodation of a looked after child. Specifically, if the local authority is considering moving a child placed in accommodation of a type mentioned in section 23(2)(a) (local authority foster care) or section 23(2)(aa) (an appropriate children’s home) to accommodation of a type that involves making “other arrangements” under section 23(2)(f), it must undertake a statutory review of the child’s case in accordance with section 26 of the 1989 Act before making a decision, unless it is necessary to make the change to the arrangements for the child’s accommodation for child protection reasons as a matter of urgency .

39. “Other arrangements” can encompass a variety of placement types including, for example, supporting young people to live independently in rented accommodation, residential employment, or in supported lodgings/hostels. Information on the numbers of children in different placement types can be found in the Children Looked After in England (including adoption and care leavers) year ending 31st March 2007 statistical first release published on the 20th September 2007 available at:

<http://www.dfes.gov.uk/rsgateway/DB/SFR/s000741/index.shtml>

Independent Reviewing Officers (IROs)

40. All local authorities are required to appoint IROs, whose functions currently include:

- participating in meetings to review care plans;
- monitoring the performance of the authority’s functions in respect of the review; and
- referring a case to an officer of the Children and Family Court Advisory and Support Service (CAFCASS), or in Wales, a Welsh family proceedings officer, if they consider it appropriate to do so.

41. The Review of Children’s Cases (Amendment) (England) Regulations 2004 set out the IRO’s additional responsibilities which include ensuring that:

- the views of children and young people are understood and taken into account in care planning;
- the persons responsible for implementing any decision taken in consequence of the

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review are identified; and

- that any failure to review the case or to take proper steps to implement review recommendations is brought to the attention of persons at an appropriate level of seniority within the responsible authority.

Clause 11: Independent Reviewing Officers

42. *Clause 11* replaces section 26(2)(k) and (2A) to (2D) of the 1989 Act with new sections 25A to 25C that set out:

- requirements regarding the appointment of IROs;
- their functions; and
- an associated provision enabling the functions of CAFCASS officers and Welsh family proceedings officers to be extended.

43. *Section 25A(1) to (3)* have the effect that when a child first becomes looked after, a named individual must be appointed by the local authority as the IRO for the child. The appointment must be made before the child's case is first reviewed (i.e. within four weeks of the date on which the child begins to be looked after). The local authority must appoint another IRO if a vacancy should arise (for whatever reason). The intention is that each looked after child should have a named IRO, to provide continuity in the oversight of the case and to enable the IRO to develop a relationship with the child.

44. *Section 25A(4)* replaces the power of the appropriate national authority to require, by regulation, the IRO, to be of a prescribed description.

45. *Section 25B(1)* set out the functions of the IRO which replaces section 26(2A) of the 1989 Act, adding the following new functions:

a. *Section 25B(1)(a)* introduces a duty on the IRO to monitor the local authority's performance of its functions in relation to the child's case. This duty will extend beyond the IRO's existing monitoring role which is currently confined to the authority's functions in respect of the review;

b. *Section 25B(1)(c)* introduces a requirement for the IRO to ensure that the local authority give due consideration to any views expressed by the child, which will reinforce the local authority's duty under section 22(4) and (5) of the 1989 Act to ascertain and give due consideration to the wishes and feelings of the child when making any decision with respect to the child.

46. *Section 25B(2)* replaces the regulation making power in section 26(2)(k) of the 1989 Act, enabling the appropriate national authority to prescribe the manner in which the IRO functions are to be performed. In addition, it gives a new power to the appropriate national authority to issue guidance to which IROs must have regard in relation to the discharge of their functions. *Section 25B(4)* imposes a new duty on the local authority to cooperate with the IRO and take all reasonable steps to enable the IRO to perform his functions.

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47. Section 25(B)(3) and 25(C)(1) and (2) replace section 26 (2A) (c) and (2C) which relate to the IRO's existing function of referring the child's case to an officer of CAFCASS (Children and Family Court Advisory and Support Service) or the equivalent in Wales, if he considers it appropriate to do so. The original provision was inserted in the 1989 Act by the Adoption and Children Act 2002 in response to a House of Lords judgement in the conjoined appeals of *Re S and Re W* (previously known as *Re W, W and B*) which concerned the respective roles of the courts and local authorities in care planning. The judgement concluded that the courts have no general power to monitor the discharge of the local authority's functions but that a local authority that failed in its duties to a child could be challenged under the Human Rights Act 1998. However the judgement also expressed concern that some children with no adult to act on their behalf may not have any effective means to initiate such a challenge. The IRO's power to refer the child's case to a CAFCASS officer provides a remedy for this problem.

48. The intention is that these changes to the statutory framework will enable the IRO to have a more effective independent oversight of the child's case and ensure that the child's interests are protected.

Clause 12: Power to make further provisions concerning independent reviewing officers

49. Clause 12(1) enables the Secretary of State either to:

- a. establish a new body corporate to discharge such functions as may be conferred on it by order; or
- b. confer additional functions (of the same nature) on CAFCASS.

50. The intention is that this power will be used to establish a national IRO service, if the amendments made by clause 11 to the existing statutory framework do not prove to be effective in achieving significant improvements in the outcomes for looked after children.

51. The functions that may be conferred on the new IRO service include functions in connection with:

- (a) providing training and accreditation for IROs;
- (b) appointing and/ or managing IROs (*clause 12(2)*)

and any other functions that may be necessary to enable the service to be delivered (*clause 12(3)*).

52. The power may also be exercised to transfer property, rights and liabilities to the new service (*clause 12 (4)*) and if in doing so it would affect employees rights, for example by transferring employees from local authority employment to the new service, the order must make provision for the Transfer of Undertakings (Protection of Employment) Regulations 2006 to apply (*clause 12(5)*). In addition, the order may require the new IRO service to

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establish a complaints procedure (*clause 12(6)*) and it may permit the service to charge fees, for example for providing training (*clause 12(8)*). *Clause 12(9)* will enable inspection of any new body established in exercise of the powers under this clause to be added to the responsibilities of the registration authority.

53. The power would also enable the Secretary of State to make consequential modifications to any enactment (both primary and secondary legislation) in relation to independent reviewing officers or in relation to CAFCASS (*Clause 12(7)*).

54. Exercise of these powers will be subject to affirmative procedure (*clause 35(2)*) (see paragraph 16 for further explanation of the Parliamentary procedure).

Visiting

Clause 13: Duty of local authority to ensure visits to looked after children and others

55. *Clause 13* inserts new section 23ZA into the 1989 Act. This provision requires local authorities to ensure that all looked after children are visited and that appropriate advice support and assistance is made available to them (*subsection (2)*). The appropriate national authority may, by regulations, extend these duties to other groups of children and young people; and specify how the duties are to be discharged (e.g. that the local authority should provide each child and their carers with emergency contact details so that the child can speak to a social worker between visits); and in particular may specify the frequency of the visits; the circumstances in which the visit must take place and the functions of the visitor (e.g. to report to the local authority, the IRO and the child's parents on the visit).

56. Performance of these duties will be subject to any particular statutory requirements that may apply to the place where the child (or young person) is actually living, for example children who are in custody or who are liable to be detained under the Mental Health Act 1983.

Clause 14: Independent visitors for children looked after by local authority

57. *Clause 14* replaces paragraph 17 of Schedule 2 to the 1989 Act, extending the group of looked after children for whom an independent person must be appointed to visit befriend and advise the child to include all those for whom an appointment would be in their interests. The appropriate national authority may by regulations extend those to whom the duty is owed automatically to further specific groups of looked after children (*subsection (1)(a)*).

58. *Subsection (9)* allows regulations to be made to describe what is required by "independence".

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Clause 15 and 16 – Notification of, and visits to, children in long term care

59. Section 85 of the 1989 Act requires that a health body (e.g. a Primary Care Trust) or a local education authority (i.e. a local authority exercising its education functions), when accommodating (or intending to accommodate) a child for at least three months, or when ceasing to accommodate a child, notify the local authority for the area where the child is ordinarily resident of the placement (the “responsible authority”). On receiving a notification of this kind, the responsible authority must take such steps as are reasonably practicable to ensure that the welfare of a child (of whom it has been notified under the requirements above) is adequately promoted and safeguarded, and consider whether it needs to exercise its functions under the Act, for example the provision of services such as parenting support under section 17, if it determines that the child is a “child in need” within the meaning of that section.

60. Section 86 of the 1989 Act requires a person carrying on a care home or independent hospital to notify the responsible authority of any child placed at their establishment in similar circumstances; and places similar duties on the responsible authority so notified.

61. The children to whom these sections relate are most likely to be placed in one of the following settings:

- Children’s homes;
- Care homes and independent hospitals;
- Health service hospitals; and
- Residential schools including maintained boarding schools; non-maintained special schools; independent boarding schools and colleges.

62. Most residential schools accommodating children to whom section 86A applies will be children’s homes within the meaning of section 1 of the Care Standards Act 2000.

63. *Clause 15* amends section 85 and 86 to ensure that the notifications described above will be sent to the Director of Children’s Services in England or the lead director in Wales.

64. *Clause 16* inserts new section 86A which places a new duty on the responsible authority to make arrangements for the children it is notified of under sections 85 and 86 to be visited. The appropriate national authority will have power to make regulations under section 86A(2), in similar terms to regulations made under section 23ZA of the Act (inserted by clause 13) i.e. they may specify the frequency of the visits; the circumstances in which the visit should take place; and the functions of the visitor (e.g. to report to the local authority, the IRO and the child’s parents on the visit) (section 86A (3)).

Education and training

Clause 17: Designated member of staff at school for pupils looked after by a local authority

65. *Clause 17* requires the governing body of a “maintained school” in England and Wales to designate a member of staff as having responsibility for promoting the educational achievement of looked after children who are registered pupils at the school (the “designated person”). In this context, “maintained school” includes community schools; foundation schools; voluntary including both voluntary aided and voluntary controlled schools; community special schools; foundation special schools; and maintained nursery schools. “Registered pupil” means a person who is registered as a pupil at a school (see further section 434 of the Education Act 1996).

66. Guidance issued in England in May 2000 (*The Education of Children and Young People in Public Care*) recommended that all schools should have a ‘designated teacher’. Similar guidance was issued in relation to Wales in 2001.

67. The responsibilities of the designated person includes both pupils who are looked after by a local authority and those who are “relevant children” or “former relevant children” within the meaning of section 23A or 23C of the 1989 Act (in summary, persons who are no longer looked after but have been at some point since the age of 16).

68. *Subsection (3)* enables the appropriate national authority by regulations to specify the qualifications and/or experience which are necessary to effectively perform the role of the designated person, and under *subsection (4)* the appropriate national authority may give guidance to which the governing body of the school must have regard when performing its functions under this provision.

Clause 18: Entitlement to payment in respect of higher education

69. This clause adds to the duties that local authorities owe to ‘former relevant children’ by amending section 23C of the 1989 Act to require local authorities (in addition to providing assistance under section 23C(4)) to pay a fixed sum to those who go on to pursue a course of higher education. The amount of the payment will be set in regulations to be made by the appropriate national authority under section 23CA(5B) which is inserted by *subsection (2)*. The regulations will also deal with the eligibility criteria, the arrangements for making the payment (e.g. whether to be paid by instalments and if so the interval between payments) and the circumstances in which instalments may cease or payments must be repaid ((e.g. if the young person ceases to attend a course). The duty to make the payment subsists while the young person follows a pathway plan, whether one made under section 23B or one made subsequently under section 23CA. The payment should not affect the young person’s entitlement to other assistance with his educational or training needs under section 23C(4). In addition the payment will be exempt from income tax by virtue of an amendment to the Income Tax (Trading and Other Income) Act 2005.

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70. “Former relevant children” are defined in section 23C(1) and include those who are over 18 and who were either relevant children (within the meaning of section 23A) or eligible children (within the meaning of paragraph 19B of Schedule 2 to the 1989 Act and regulations made under sub-paragraph (3) of that provision) immediately before their 18th birthday .

Clause 19: Assistance to pursue education or training

71. Currently all eligible, relevant and former relevant children (defined by paragraph 19B of Schedule 2 to, and sections 23A and 23C of the 1989 Act respectively) must have a personal adviser who will, in accordance with regulations made under section 23B, be involved in drawing up the young person’s pathway plan, make sure that it is regularly reviewed, and that it is implemented. When the young person leaves care, and until they are at least 21, the person adviser will in practice be responsible for performing the local authority’s duty to keep in touch with them and ensuring that they receive the advice and support to which they are entitled.

72. *Clause 19*, by inserting a new section 23CA into the 1989 Act, extends the duties of local authorities to appoint a personal adviser to include a former relevant child who informs the responsible authority (that is, the authority that formerly looked after him) that he is pursuing or intends to pursue a programme of education or training but to whom the local authority would otherwise owe no duty under section 23C because the young person is over 21 years of age and has completed (or abandoned) the programme set out in his original pathway plan. In relation to such a young person, who must be under 25 years (or such lower age as the appropriate national authority may prescribe), the local authority must also carry out an assessment of needs, prepare a pathway plan and provide such assistance as the person’s educational and training needs require. The local authority may take into account any payment made under section 23C(5A) when making their assessment of his needs (*section 23CA(10)*).

73. *Section 23CA(6)* requires the local authority to provide assistance (including appointment of a personal adviser and maintenance of the pathway plan) for as long as the young person continues to pursue the agreed educational or training programme, even where this goes beyond a young person’s 25th birthday.

Clause 20: Extension of entitlements to personal adviser and to assistance in connection with education or training

74. Section 23D(1) of the 1989 Act enables regulations to be made requiring local authorities to appoint personal advisers for certain groups of young people. This power has not been exercised. *Subsection (1)* of Clause 20 extends the upper end of the age range to which section 23D(1) applies so that regulations under that section will be able to require the appointment of a personal advisor for persons who are younger than 25.

75. *Subsection (2)* of Clause 20 extends the upper end of the age range to which the powers for local authorities to provide assistance towards expenses incurred by a young person in education or training apply to age 25.

Cash payments

Clause 21: Extension of power to make payments in cash

76. Under section 17 of the 1989 Act local authorities have a duty to safeguard and promote the welfare of children within their area who are in need and, so far as is consistent with that duty, to promote the upbringing of such children by their families by providing a range and level of services appropriate to those children's needs. The services provided by a local authority in exercising this duty may include giving assistance in kind or, in exceptional circumstances, in cash; they may also include providing accommodation for the child, with or without his family (section 17(6)).

77. This clause would remove the restriction on the making of cash payments by removing the phrase "in exceptional circumstances" from section 17(6). The intention is to allow local authorities to exercise a much wider discretion over the circumstances in which they make cash payments to those caring for children in need. The amendment will enable local authorities to provide regular and continuing financial support to children in need where this is assessed as being the most appropriate way to safeguard and promote their welfare.

78. "Child in need" is defined in section 17(10) as a child who is unlikely to achieve or maintain a reasonable standard of health or development without provision of services; or a child who is disabled (defined in subsection (11)).

79. Services may also be provided for a member of the child's family if it promotes the child's welfare (section 17(3)). Any person who has parental responsibility for the child and any other person with whom he has been living is potentially eligible for this support (see the definition of 'family' in section 17(10)).

80. Section 17(8) requires the local authority to assess the means of the child and his parents before providing any assistance. Local authorities may decide if the assistance (or its value) should be repaid and the conditions under which this should occur. Persons receiving assistance are, however, exempt from repayment whilst in receipt of certain social security benefits.

Enforcement of care standards (Clauses 22 to 25)

81. Under the provisions of Part 2 of the Care Standards Act 2000, a person who carries on or manages a children's home, a fostering agency, a residential family centre, an adoption support agency or a voluntary adoption agency must be registered with the registration authority. Conditions may be imposed in relation to registration, either at the point of registration or at any later date, and it is an offence to breach those conditions. There is a right of appeal to a Tribunal against a refusal to register a person or a decision to cancel registration.

82. Standards of provision in children's social care establishments and agencies are

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inspected by the registration authority for compliance with the respective regulations made under section 22 of the Care Standards Act, or in the case of adoption agencies, under section 9 of the Adoption Act 1976 and section 9 of the Adoption and Children Act 2002. Each type of establishment and agency is subject to its own set of regulations e.g. the Children's Homes Regulations 2001.

83. The Regulations impose various obligations on the person carrying on the home and the manager, for example, making sure staff employed at the home have the necessary qualifications and experience. There are also National Minimum Standards (NMS), published under section 23 of the Care Standards Act 2000, which are applicable to establishments and agencies and must be taken into account when they are assessed for compliance. The registration authority will consider the degree to which a children's home complies with the requirements in the regulations, with reference to the NMS, when making decisions regarding registration, the imposition of conditions for registration and enforcement action including proceedings for cancellation of registration or prosecution. The NMS are currently being reviewed by the Department and new NMS are expected to come into effect in 2009.

84. *Clauses 22 to 25* amend the Care Standards Act 2000 to confer additional powers and duties on the registration authority in relation to standards in children's social care settings. The children's social care settings affected by Clause 22 are those establishments and agencies regulated under Part 2 of the Care Standards Act 2000, including children's homes, fostering agencies, residential family centres, adoption support agencies and voluntary adoption agencies. *Clause 23* (restriction on admissions) applies only to residential settings, i.e. children's homes and residential family centres.

85. It should be noted that the Care Standards Act 2000 is being amended by another Bill currently before Parliament. The Health and Social Care Bill makes amendments to this Act in the course of establishing a new regulator for health and adult social care in England: the Care Quality Commission. Those establishments and agencies providing adult social care in England which are currently regulated under Part 2 of the Act will be regulated by the new commission by virtue of provisions in the Health and Social Care Bill. The Care Standards Act 2000 provisions in relation to independent medical care (including independent hospitals, independent medical agencies and nursing agencies) will also apply only in relation to Wales. The current regulators, the Commission for Healthcare Audit and Inspection and the Commission for Social Care inspection will be abolished.

Clause 22: Power of Chief Inspector where person is failing to comply with requirement relating to children's homes etc.

86. This clause applies to England only. The clause inserts new section 22A into the Care Standards Act 2000. That section will enable the Chief Inspector to serve a "compliance notice" where he is of the opinion that an establishment or agency is not meeting the required standards, as set out in the relevant regulations and NMS.

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87. The notice may be served on the registered owner or proprietor of the establishment or agency (i.e. the person “carrying on”) as well as the person managing it.

88. The clause outlines the required content of the notice including specifying how, in the view of the Chief Inspector, the establishment or agency is failing to meet the standards and the steps that need to be taken to remedy this (*subsection (3)*). A person failing to take these steps within the required timescale will be guilty of a criminal offence and may be fined accordingly (*subsections (4) and (5)*).

89. Failure to act on the compliance notice is a ground for cancellation of registration. *Subsection (1)* of this clause amends section 14 of the Care Standards Act 2000 to that effect.

Clause 23: Power to serve notice restricting accommodation at certain establishments

90. This clause inserts a new section 22B into the Care Standards Act 2000.

91. Section 22B enables the Chief Inspector or, in Wales, the Welsh Ministers, (the registration authority) to impose a requirement preventing any new admissions of children to certain residential settings. Where the registration authority imposes such a requirement it is necessary for a notice to be served on each person who is registered in respect of the establishment concerned.

92. The notice must set out the reasons for the notice being served and must explain the right of appeal (*subsection (3)*).

93. The notice may be time-limited and may be revoked (*subsection (4)*). The notice is subject to a right of appeal to a Tribunal provided for in Clause 24.

Clause 24: Appeals etc. in relation to notices under section 22B of the Care Standards Act 2000

94. This clause amends section 21 of the Care Standards Act 2000 to create new grounds for an appeal to the Tribunal, namely the serving of a notice restricting accommodation (as provided for in clause 23). Appeals must be made to the Tribunal within 28 days of the notice being served (*subsection (3)*). Upon hearing the appeal, the Tribunal may confirm the notice and the ensuing restriction on accommodation or uphold the appeal in favour of the provider.

95. It is intended that, where the person who has been served a notice so elects, the process for hearing this appeal will be expedited. This will be achieved by amendments to the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002.

96. *Subsection (5)* clarifies that the NMS should be taken into account when the registration authority is considering whether to issue a notice under new section 22B and when the Tribunal makes decisions about appeals regarding these notices.

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Clause 25: Notification of matters relating to persons carrying on children's homes etc

97. This clause places a duty on the Chief Inspector or, in Wales, the Welsh Ministers, to notify each local authority in England and Wales when certain enforcement action is taken. The clause inserts a new section 30A into the Care Standards Act 2000 to this effect.

98. The enforcement action may be:

- a decision to cancel registration;
- bringing proceedings for an offence (such as the failure to comply with a notice under new section 22A or other offences as specified); or
- service of a notice restricting accommodation (as provided for in new section 22B).

99. The notification will alert local authorities to the underperformance of a provider. It is intended that, in the case of residential settings, and where a child (or children) in their care is currently provided with accommodation with that provider, local authorities will conduct a review as to whether those placements should continue.

100. *Subsection (3)* enables the Secretary of State (in Wales, the Welsh Ministers) to make regulations to specify the circumstances in which local authorities should be advised of an updated position (e.g. a prosecution is no longer proceeded with or a provider has successfully appealed a decision to cancel registration).

101. *Subsection (4)* enables the making of regulations specifying the information to be contained in the notification (e.g. the name of the provider and of the relevant establishment or agency).

102. *Subsection (5)* provides that a notification under this section may be transmitted electronically (as defined in *subsection (7)*) if the local authority has consented to this arrangement.

Emergency Protection Orders

Clause 26: Removal of restriction on hearing of application for discharge of emergency protection order

103. Provision for Emergency Protection Orders (EPOs) is made in Part 5 of the 1989 Act. The circumstances in which an EPO will be granted, extended and discharged are set out in sections 44 and 45 of the Act. Section 44(1) provides for an EPO to be made for a period of up to 8 days (with a further extension of 7 days) if the court is satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm if:

- (i) he is not removed to accommodation provided by or on behalf of the applicant; or
- (ii) he does not remain in the place in which he is then being accommodated.

The court must be satisfied that the child is likely to be in "imminent danger" if he is not removed from home.

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104. The provisions relating to the discharge of EPOs are contained in sections 45(9) to (11). In a recent judgment of the Northern Ireland High Court, it was held that Article 64(8) of The Children (Northern Ireland) Order 1995 which is identical to section 45(9) of the 1989 Act and provides that “no application for discharge of an emergency protection order shall be heard for 72 hours beginning with the making of the order” is contrary to Articles 6(1) and 8 of the European Convention on Human Rights (ECHR).

105. The decision of the Northern Ireland High Court is not binding on the courts of England and Wales. However, the decision would be persuasive in these courts and, accordingly, *clause 26* repeals section 45(9) of the 1989 Act to ensure that provisions for the discharge of Emergency Protection Orders are compatible with Articles 6 and 8 ECHR. The clause allows the court to hear an application to discharge an emergency protection order as soon as it is made.

Information and research (Clauses 27 to 28)

106. The Children Act 2004 places an obligation on local authorities to set up Local Safeguarding Children Boards (LSCBs). A number of persons and bodies, including children’s services authorities, NHS bodies and the police are represented on LSCBs.

107. Local authorities rely on many different sources of information about child deaths including professionals, the public, and the media. Local registrars of births and deaths do not have a statutory power or a duty to provide information about the death of a child to LSCBs or other persons in the absence of a specific request for information about a particular child’s death. There are also no statutory powers or duties for the Registrar General to provide child death information to the Secretary of State or to Welsh Ministers.

108. *Clause 27* places a duty on registrars to provide the LSCB in their sub-district with the following information in relation to the deaths of children (i.e. persons who were or may have been under 18 years of age at the time of death):

- the particulars of death within 7 days of registering the death;
- notification of any corrections made to the registrar for that sub district within 7 days of making such corrections; and
- information about any certificate issued under section 24(2) of the Births and Deaths Registration Act 1953, within 7 days of issue.

109. *Subsection (9)* requires LSCBs to make arrangements for the receipt of such notifications, and to publish these arrangements.

110. *Clause 28* amends the list of relevant enactments at section 83(9) of the 1989 Act for the purposes of subsections 83(1)(a) and 83(2)(a) of this Act, which gives statutory powers to the Secretary of State and to local authorities respectively, to conduct, or assist other persons, in conducting research into specified matters including the functions, of the Secretary of State, and for the purposes of section 83(3), which requires local authorities to provide information

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to the Secretary of State in respect of the performance of their functions under the relevant enactments. It amends the list of relevant enactments by adding:

- Part 1 of the Adoption and Children Act 2002;
- the Children Act 2004; and
- the Children and Young Persons Act 2008 (assuming that the Bill receives Royal Assent).

111. The clause also amends subsections 83(1)(a) and 83(2)(a) and 83(3)(a) of the 1989 Act to include LSCBs, to provide a statutory power to the Secretary of State and to local authorities to conduct research into the functions of LSCBs.

112. Clause 28 further amends section 83(3) of the 1989 Act to provide that a local authority must at such times and in such form as the Secretary of State may direct transmit to him such particulars as he may require as to the performance by the LSCB for the local authority's area of all or any of their functions.

Part 3 – Fostering and Adoption

Clause 29: Independent review of determinations relating to local authority foster parents

113. *Clause 29* amends Schedule 2 to the 1989 Act by inserting a new paragraph 12A. Paragraph 12A will enable regulations to make provision for prospective or existing foster carers to apply to the Secretary of State in England (or the Welsh Ministers in Wales) for an independent review of the determination of a fostering service provider regarding a person's suitability or continuing suitability to foster a child (this is known as a qualifying determination and is defined in paragraph 12A (2)).

114. Under existing provisions (set out in regulation 28(6)(b) and regulation 29(7)(b) of the Fostering Services Regulations 2002) foster carers are able to challenge a fostering service provider's proposal not to approve them by making written representations to the fostering service provider; the provider must refer the case back to the fostering panel and take any fresh recommendations into account in making its decision. These regulations also set out the approvals process which must be followed by fostering service providers in assessing the suitability of prospective applicants and the procedures to follow with regards to terminating approval.

115. Regulations made by virtue of new paragraph 12A of Schedule 2 will be able to provide an additional means for foster carers to challenge a proposal not to approve them – by applying to a panel established by the Secretary of State in England (or the Welsh Ministers in Wales) for a review by an independent panel.

116. It is intended that this independent review mechanism for foster carers will operate in a similar way to the current mechanism which considers applications from prospective adopters for an independent review of an adoption agency determination that they are not

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suitable to adopt or to withdraw their earlier approval. Where the prospective adopters apply for an independent review, the independent review panel convened to review the case considers the case afresh and makes a recommendation to the adoption agency; the adoption agency must take that recommendation into account, along with that of the agency's adoption panel, when making its decision. This mechanism was established by sections 9 and 12 of the Adoption and Children Act 2002 and secondary legislation made under the enabling powers contained in those provisions.

117. Under paragraph 12A(1)(b) and (3) the 'appropriate national authority' may, by regulations, prescribe the details of the IRM. This may include, for example, the procedure for review of the qualifying determination, the functions of the panel and its constitution and membership (e.g. that the panel shall include social workers and those considered by the appropriate national authority to be suitable members, including persons with experience of fostering). It is intended that the regulations will cover similar matters to the Independent Review of Determinations (Adoption) Regulations 2005.

118. Subparagraph (4) gives the appropriate national authority the power to recover the costs of reviews. However, these costs will not be recoverable from the person who made the application for an independent review. Subparagraph (5) provides that the sums payable to the appropriate national authority must not, taking one financial year with another, exceed the costs incurred in performing the independent review functions. Subparagraph (9) makes similar provision in situations where the national authority has made arrangements under subparagraph (6) for its functions to be performed on its behalf by an organisation. The definitions of "financial year" and "independent review function" are both included in subparagraph (11).

119. Paragraph 12A(6) to (8) enables the IRM for fostering to be operated by an independent organisation. The organisation operating the IRM on behalf of the national authority must perform its functions in accordance with any general or special directions which the appropriate national authority may give. Subparagraph (7) makes provision for payments to be made to the organisation.

120. Paragraph 12A(10) gives the Welsh Ministers the power to enter into an arrangement under which their functions in relation to independent reviews are performed by the Secretary of State. A similar power exists in section 12(7) of the Adoption and Children Act 2002 in relation to the adoption IRM, but has not been exercised to date.

Clause 30: Independent review of determination relating to adoption

121. *Clause 30* amends the existing powers in section 12 of the Adoption and Children Act 2002 which enable regulations to provide for the independent review of qualifying determinations.

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122. *Subsection (2)* amends section 12 to clarify that the regulations are to provide for the application for a review to be made to the appropriate Minister, and that the review is to be by a panel constituted by that Minister.

123. *Subsections (3) to (7)* provide that the regulations may impose a duty to make a payment to the appropriate Minister of such sums as the appropriate Minister may determine, though the sums payable to the national authority must not, taking one financial year with another, exceed the costs incurred in performing the independent review functions. These provisions replace the existing powers under which it is the independent review panel which has a power to recover the costs of a review.

Clause 31: Extension of period allowed for making regulations under section 45 or 46 of the Children Act 2004

124. Section 45 of the Children Act 2004 gives the Secretary of State the power to establish, through regulations, a scheme for the registration of private foster carers. Section 46 confers equivalent powers on the Welsh Ministers. These provisions allow the regulations to specify, for example, how a local authority should determine suitability of private fostering arrangements, the grounds on which individuals may be disqualified from private fostering, how individuals may appeal against decisions regarding their registration and how the registration scheme application would work in practice.

125. Section 47 provides that if no regulations have been made under either section within four years of Royal Assent, then the relevant section will cease to have effect. This operates independently in England and Wales, so if regulations are not made in England within the four year period, the power in section 45 (to make regulations in England) expires even if regulations have been made under section 46 in Wales (and vice versa).

126. The powers under these sections will lapse in November 2008. *Clause 31* amends section 47 so that the powers will not lapse for a further 3 years, i.e. until November 2011.

127. Private fostering is regulated by Part 9 of and Schedule 8 to the 1989 Act and the Children (Private Arrangements for Fostering) Regulations 2005/1533.

128. A “privately fostered” child is one who:

- a. is cared for by a person who is not a relative and who doesn't have parental responsibility and provided with accommodation in that person's home, and;
- b. is under the age of 16, or under the age of 18 if they are disabled,

where the care and accommodation have been provided for more than 28 days (or where the intention is to accommodate for longer than 28 days). This is defined in section 66 of the 1989 Act.

Part 4 – Orders under Part 2 of the 1989 Act

Clause 32: Entitlement of relative to apply for a residence order

129. *Clause 32* provides that an application for a residence order can be made by a relative, without first seeking the permission of the court, in circumstances where the child has been living with them for one year immediately prior to the application. The clause inserts a new subsection (5B) in section 10 of the 1989 Act to that effect. The existing qualifying condition for relatives is that the child must have been living with them for a period of three years out of the last five years.

130. Section 113 of the Adoption and Children Act 2002 amended the qualifying condition for a local authority foster carer applying for a section 8 order, including a residence order to a one year period. These clauses are intended to align the position of relative carers with local authority foster carers.

131. A relative is defined in section 105 of the 1989 Act as a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership) or step-parent.

Clause 33: Duration of residence orders

132. *Clause 33* provides that a residence order, unlike other section 8 orders, is to last until the child reaches the age of 18 unless the courts direct that the order should end earlier or another order is made discharging the residence order prior to that date. The intention is to provide enhanced security for the child where the holder of a residence order who is not the child's parent is caring for the child on a long term basis.

133. At present, a residence order ceases to have effect when the child reaches the age of 16, unless the court is satisfied that the circumstances are exceptional e.g. the child has a learning disability. Section 114 of the Adoption and Children Act 2002 empowered the courts to direct in appropriate cases that a residence order made in favour of someone who is not the parent or guardian of a child may be extended until the child reaches the age of 18.

134. The clause amends sections 9 and 12 of the 1989 Act to the effect described above.

Clause 34: Entitlement of relative to apply for a special guardianship order

135. *Clause 34* mirrors the provision in Clause 32 above in relation to relatives applying for special guardianship orders and amends section 14A (5) of the 1989 Act to that effect.

Part 5 – General and Final Provisions (Clauses 35 to 40)

136. *Clauses 35 to 40* contain general provisions including those relating those related to powers to the exercise of powers to make orders and regulations; general interpretation provisions, commencement, extent of the Bill and the short title of the Act.

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137. Clause 35 provides that all subordinate legislation made under the Bill is to be made by statutory instrument. Any statutory instruments made under section 1(7) or (8) (social work practices) or section 12 (independent reviewing officers) are subject to affirmative procedure. (See paragraph 16 for an explanation of the difference between the two procedures.) All other statutory instruments will be subject to the negative resolution procedure. A commencement order made under section 39 is not to be subject to any parliamentary scrutiny. Subordinate legislation made by the Welsh Ministers will be subject to scrutiny by the National Assembly for Wales.

138. Clause 37 introduces the repeal schedule (*Schedule 1*) which specifies the extent to which the enactments listed are to be repealed.

FINANCIAL EFFECTS OF THE BILL

139. The majority of the proposals in the Bill seek to ensure better value from existing programmes. However, there are additional costs from some elements of the Bill – amounting to approximately £70m. Costs will be met from within the Comprehensive Review Settlement for 2008-11. Further details are outlined in the accompanying impact assessment. It is not anticipated that any additional expenditure should fall on the Consolidated Fund or the National Loans Fund as a consequence of this Bill.

EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER

140. There are no public service manpower commitments arising from the Bill which would give rise to additional requirements. It is estimated that the overall effect of the Bill on public sector manpower would be negligible.

SUMMARY OF THE IMPACT ASSESSMENT

141. The impact assessment for the Bill analyses the costs and potential benefits of the proposals and assesses their possible impact on race, gender and disability equality. A copy will be placed in the Library of both Houses. It will also be available online at www.dcsf.gov.uk/publications/childrenandyoungpersonsbill and in hard copy from the Department of Children, Schools and Families. The provisions in the Bill are largely focused on public sector reforms and will not have significant implications for the private and voluntary sectors as a whole.

EUROPEAN CONVENTION ON HUMAN RIGHTS

142. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before second reading about the compatibility of the provisions of the Bill with the European Convention on Human Rights (as defined by section 1 of that Act).

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143. Having considered the possible implications, the Parliamentary Under Secretary of State for Schools believes that the Children and Young Persons Bill [HL] will be fully compatible with the European Convention on Human Rights. There are some areas where it would be helpful to provide further comments for clarification, as follows.

Part 1 – Delivery of Social Work Services for Children and Young Persons

144. Clause 1 enables the local authority to make arrangements with a body corporate (referred to in Part 1 as a “provider of social work services”) for the discharge by the body of some or all of that authority’s social services functions in relation to individual children who are looked after by the authority and its functions in relation to care leavers.

145. The authority’s functions in relation to looked after children include functions the exercise of which are likely to engage Convention rights, for example, the exercise of parental responsibility by the local authority where the child is subject to a care order. Certain functions are excluded – the authority’s functions in relation to IROs and its functions in relation to making arrangements for adoption (unless the body is also a registered adoption society).

146. Clause 6 makes provision for these arrangements to be piloted in the first instance and, if the pilots are successful, the enabling power will be extended to all local authorities. In that event all providers of social work services will be regulated as agencies under the Care Standards Act 2000 (clause 4). The Care Standards Act provides for the registration and inspection of establishments and agencies such as children’s homes and independent fostering agencies.

147. A provider of social work services in discharging the functions of the local authority will be exercising functions of a public nature and as such will be a “functional” public authority for the purposes of section 6(3)(b) of the Human Rights Act. As such, the provider will be under a duty to act compatibly with Convention rights and will be directly liable for any breaches of Convention rights, but only to the extent that it does carry out functions of the requisite nature and is not performing private acts. Clause 3, which makes provision in relation to the effect of arrangements under clause 1, provides that the local authority will be liable for the acts and omissions of the provider save in respect of any act of a private nature done by the provider. This ensures that the local authority has no greater liability under the Human Rights Act, for the acts of the provider, than the provider itself.

Clauses 23 and 24: Power to service notice restricting accommodation at certain establishments and appeals in relation to these notices

148. Clauses 23 and 24 insert a new power for the registration authority to serve a notice on a registered proprietor of a children’s home or a residential family centre, requiring that no new child is accommodated at that establishment, and provide a right of appeal to the Care Standards Tribunal against service of such a notice.

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149. The Article 1 Protocol 1 right to protection of property could be engaged by this new power, in that the imposition of a restriction may have a detrimental financial effect on a person carrying on an establishment or agency. However, the provider would not be subject to a notice restricting accommodation unless he had failed to comply with statutory requirements.

150. The registration authority is required by the clause to specify the reasons for serving the notice. This provision is intended to encourage the use of the power in a proportionate manner, taking account of the relevant circumstances. There will also be a mechanism for expediting the hearing of the appeal thereby addressing any potential Article 6 concerns.

Clause 26: Removal of restriction on hearing of application for discharge of emergency protection order

151. Clause 26 repeals section 45(9) of the 1989 Act and is made in response to a recent Northern Ireland High Court case. The provision removes the 72-hour moratorium on the court's powers to hear an application to discharge an EPO, thereby ensuring that the EPO procedure is compatible with the Convention.

Clause 29: Independent review of determinations relating to local authority foster parents

152. Clause 29 extends the independent review mechanism to cover decisions on suitability to foster a child and allows for an independent review of decisions of fostering panels. Article 6 rights are not engaged as the review is an addition to the current decision-making process rather than replacing any part of it and there is recourse to judicial review proceedings.

COMMENCEMENT

153. The provisions of the Bill will be brought into force by way of a commencement order made by, in England the Secretary of State, and in Wales, by the Welsh Ministers, with the exception of clauses 15, 16, 27 and 28. An order bringing clauses 15, 16, 27 and 28 requires the consent of the Welsh Ministers.

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ANNEX A: GLOSSARY OF TERMS

Children in Care/Looked After Children

‘Children in care’ or ‘children in public care’ are the expressions used by practitioners and in publications to describe children who are looked after by a local authority under Part 3 of the 1989 Act. Strictly speaking, the expression ‘in care’ should only be used in respect of a child who is in the care of a local authority by virtue of a care order made under section 31 (1) CA 1989 or an interim care order made under section 38 CA 1989. Whereas ‘looked after children’ refers to children who are the subject of care orders or interim care orders, a or who have been provided by the local authority with accommodation for more than 24 hours either under section 20 (sometimes referred to as ‘voluntary accommodation’) or for their own protection or by virtue of an order made in criminal proceedings (under section 21); or who have been placed or authorised to be placed with prospective adopters by a local authority (but not a registered adoption society).

CAFCASS – Children and Family Court Advisory and Support Service

A non-departmental public body (NDPB) established on 1st April 2001 as a dedicated national service to promote the best interests of children involved in family court proceedings. Looks after the interests of children involved in family proceedings, for example, when parents who are separating or divorcing can't agree on arrangements for their children. It works with children and their families, and then advises the courts on what it considers to be in the children's best interests.

Director of Children’s Services (DCS)

The Children Act 2004 required every top-tier or unitary local authority in England to appoint a DCS for the purposes of authorities' education and social services functions for children, and any health functions for children delegated to the authority by an NHS body.

Foster care

Foster care refers to a type of placement in which the child lives with an individual in their family home. Local authority foster carers (that is a foster carer with whom a child has been placed under section 23 (2) of the 1989 Act) must be approved by fostering services registered under the Care Standards Act 2000.

Independent Reviewing Officer (IROs)

Independent reviewing officers are registered social workers who are independent of the management of the cases of children in care that they review (defined in regulation 2A of the Review of Children’s Cases Regulations 1991 as amended by Statutory Instrument

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as introduced in the House of Lords on 14th November 2007 [HL Bill 8]*

2002/1419). Since September 2004, local authorities have been required to appoint independent reviewing officers to chair all statutory review meetings for children in care. They must monitor the local authority's performance in relation to the review, working with them to ensure children's needs are being met.

Local Safeguarding Children Boards (LSCBs)

LSCBs were established under section 13 of the Children Act 2004. The membership of LSCBs includes local authorities, health bodies, the police and others. They are the main statutory mechanism to coordinate and ensure the effectiveness of their member agencies in safeguarding and promoting the welfare of children.

National Minimum Standards

The National Minimum Standards set out the minimum that is expected of providers of specific services, such as fostering services and children's homes. They are enforced through regulations made under the Care Standards Act 2000.

Out of authority placement

Refers to an arrangement in which a child is placed in accommodation outside the boundaries of the local authority which is its corporate parent. In these circumstances the placing authority is required to notify the authority in which the child is placed so that arrangements to meet the child's needs can be made.

Parental responsibility

Section 3 (1) of the 1989 Act defines parental responsibility as 'all the rights, duties, powers, responsibilities and authority which, by law, a parent of a child has in relation to the child and his property.' Local authorities share parental responsibility with the birth parents for children in care under a care order. The provision of local authority accommodation under section 20 of the 1989 Act, however, has no effect on parental responsibility and parents may remove their children from such accommodation at any time, without notice.

Personal Adviser (PA)

Connexions personal advisers provide information, advice and guidance, support for young people aged 13 to 19, including vulnerable young people requiring more substantial one-to-one support. Their key objective is to support young people to remain in learning and to fulfil their potential.

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Placement

In social care, placement refers to the accommodation (i.e. physical living situation) in which a child in care is ‘placed’ by the local authority; this reflects the wording used in the 1989 Act, in particular section 23. A placement may be with foster carers or in a residential children’s home, for example.

Primary Care Trust

Primary care trusts (PCTs) are local free-standing NHS statutory bodies, responsible for planning, providing and commissioning health services for the local population. The government sees PCTs as the cornerstone of the NHS. Established under the provisions of the Health Act 1999, they provide all local GP, community and primary care services, and commission hospital services from other NHS trusts.

Relative

A relative is defined in section 105 of the 1989 Act as “in relation to a child, a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership) or step-parent.”)

Special guardianship

A Special Guardianship Order made under section 14B of the 1989 Act gives carers, such as grandparents or existing foster parents, parental responsibility, which they can exercise to the exclusion of other people with parental responsibility (except other special guardians) and responsibility for all aspects of caring for the child or young person, and for taking decisions to do with their upbringing. Special Guardianship preserves the basic legal link between the child or young person and their birth family, and the special guardian is entitled to an assessment of his need for support services (section 14F).

CHILDREN AND YOUNG PERSONS BILL [HL]

EXPLANATORY NOTES

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