

CHILDREN ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Advisory and Support Services for Family Proceedings

CAFCASS functions in Wales

Section 35: Functions of the Assembly relating to family proceedings

152. This section confers on the Assembly the functions currently carried out for England and Wales by the Children and Family Court Advice and Support Service (CAFCASS). CAFCASS serves the Family Division of the High Court, county courts (including care centres), and family proceedings courts. The service safeguards and promotes the welfare of the children before courts dealing with family proceedings; gives advice to any court about any application made to it in such proceedings; makes provision for the children to be represented in such proceedings; and provides information, advice and other support for the children and their families.
153. The intention is that, following the coming into force of this section, responsibility for the welfare of children who are ordinarily resident in Wales who are or may be the subject of family proceedings as defined, will devolve to the Assembly. For all other children, responsibility will be retained by CAFCASS, although it is anticipated that there may be agreed reallocation of cases between CAFCASS officers and Welsh family proceedings officers, as defined in *subsection (4)*.
154. *Subsection (2)* provides that the Assembly must ensure that arrangements are made to enable Welsh family proceedings officers to exercise their duty as imposed by any enactment.

Section 36: Ancillary powers of the Assembly

155. *Subsection (1)* allows the Assembly to make arrangements with organisations to perform its functions under section 35. This would give the Assembly the option of contracting with some other body to perform the functions on its behalf. *Subsection (8)* makes it clear that such a body could be in the public, private, or voluntary sectors.
156. *Subsection (2)* allows any organisation doing this work to designate individuals to carry out functions of Welsh family proceedings officers.
157. *Subsection (3)* sets conditions of quality and value for money if the Assembly is to make arrangements with another organisation.
158. *Subsection (4)* enables the Assembly to make arrangements with individuals, such as self-employed practitioners, to carry out functions of Welsh family proceedings officers.
159. *Subsections (5) and (6)* allow the Assembly to second staff and provide services to those carrying out the functions, while *subsection (7)* allows it to charge for doing so.

Section 37: Welsh family proceedings officers

160. *Subsection (1)* provides that the Assembly may authorise a Welsh family proceedings officer to conduct litigation in relation to any proceedings in any court and to exercise a right of audience in any proceedings before any court, in the exercise of his functions as a Welsh family proceedings officer if he is of a description as prescribed by the Secretary of State.
161. By virtue of *subsections (2) and (3)* a Welsh family proceedings officer exercising a right to conduct litigation, or the right of audience under this section, is treated as having acquired that right solely by virtue of this section, and not by virtue of any qualification which he might have.

Section 38: Inspections

162. This section allows the Assembly to request inspection and report on the relevant activities of the Assembly and Welsh family proceedings officers post devolution. Such a request will require the agreement of the Secretary of State as having responsibility for the inspectorate.

Section 39: Protection of children

163. *Subsection (1)* applies the Protection of Children Act 1999 to the Assembly as though it were a childcare organisation for the purposes of the functions of the Assembly under this part. The Protection of Children Act relates to the suitability of people to work with children, and the section also provides for the Assembly to ensure that appropriate mechanisms are in place in any organisations carrying out the functions on the Assembly's behalf in order that the Assembly can be satisfied that persons employed by that organisation are suitable.

Section 40: Advisory and support services for family proceedings: supplementary

164. The section brings Schedule 3 into effect.

Schedule 3 – Advisory and support services for family proceedings

165. The amendments in *paragraphs 2 to 11 and 15 to 18* of the Schedule make provision relating to 'Welsh family proceedings officers' and their functions. In particular, the amendments confer the same functions on Welsh family proceedings officers as currently exist for officers of CAFCASS.
166. The amendment in *paragraph 13* limits the functions of CAFCASS to children other than those ordinarily resident in Wales.
167. The amendment in *paragraph 14* makes consequential provision relating to the membership of CAFCASS.

Section 41: Sharing of information

168. This section provides for the Assembly and CAFCASS to be given powers for the mutual exchange of information where such information will clearly be in the interests of those children who are the subject of family proceedings and where it is in the interests of good practice and management issues. *Subsection (2)* provides for corresponding powers to be given to individual officers of both organisations.

Transfers

Section 42: Transfer of property from CAFCASS to Assembly

169. This section provides for a scheme agreed by the Secretary of State and Assembly to provide for the transfer of property, rights, and liabilities from CAFCASS to the Assembly.

Section 43: Transfer of staff from CAFCASS to Assembly

170. The Secretary of State and the Assembly may make a scheme under this section for the transfer of employees from CAFCASS to the Assembly in order to enable the exercise of the new functions conferred on the Assembly. Under the scheme, the Assembly would inherit the responsibilities of CAFCASS as employer as though the original contract of employment had been with the Assembly and not with CAFCASS.
171. *Subsection (5)* provides that, should any employee object to transfer, then he is not to be transferred, his contract is terminated immediately before transfer and he is not to be treated as though he had been dismissed. The section does not prevent an employee from ending his contract if a substantial detrimental change is made to working conditions.
172. *Subsection (7)* makes it a prerequisite to the making of a scheme for any prescribed requirement as to consultation with CAFCASS employees to have been complied with.

Private fostering

Section 44: Amendments to notification scheme

173. The law on private fostering arrangements and the role of local authorities with respect to them is set out in Part 9 of, and Schedule 8 to, the Children Act 1989 and in the Children (Private Arrangements for Fostering) Regulations 1991.
174. A privately fostered child is one who is under the age of 16 (under 18 if he is disabled) and who is cared for and accommodated by someone other than a parent, other person with parental responsibility or close relative. A child is not privately fostered if the person caring for them has done so for fewer than 28 days and does not intend to do so longer than that. There are a number of exemptions from this definition set out in Schedule 8 to the Children Act 1989.
175. The current legislative provisions relating to private fostering, referred to in these notes as the notification scheme, require those involved in a private fostering arrangement to give the local authority advance notice of it. Privately fostered children are not 'looked after' children in the terms of section 22 of the Children Act 1989 and local authorities do not get involved in the making of such arrangements, but they have to satisfy themselves that the welfare of privately fostered children in their area is satisfactorily safeguarded and promoted. They also have powers to impose requirements on arrangements and to prohibit them altogether.
176. The amendments in *subsections (2) to (5)* extend the duties of local authorities in cases where a child is proposed to be, but is not yet, privately fostered.
177. *Subsection (2)* amends section 67(1) of the Children Act 1989, under which local authorities are required to satisfy themselves that the welfare of privately fostered children is being satisfactorily safeguarded and promoted, so that the duty also applies in respect of children who are proposed to be privately fostered.
178. *Subsection (2)* also amends the duty on local authorities under section 67(1), which requires them to secure that such advice is given to those caring for privately fostered children as appears to the authorities to be needed. The amendment extends the duty to include advice to prospective foster carers and/or to parents. The intention is that local authorities should be able to give such advice, for example, where one

proposed fostering arrangement has been prohibited by the local authority and no other is currently contemplated. The parents may need advice then on what alternative arrangements can be made for the care of their child.

179. Section 67(2) of the Children Act 1989 gives the Secretary of State the power to make regulations about visits by the local authority to privately fostered children and imposing requirements which are to be met by local authorities in carrying out their functions under section 67.
180. The new subsection (2A), inserted by section 44(3), provides that the regulations made under section 67(2)(b) may say what local authorities have to do when they are told that a child is going to be privately fostered. The intention is that these regulations will require local authorities to carry out proper checks on, and satisfy themselves of the suitability of, a proposed arrangement or exercise their powers to prohibit, or impose requirements on, the arrangement before the child is privately fostered.
181. *Subsection (4)* amends section 67(3) of the Children Act 1989. The existing reference in this section to a person authorised “to visit privately fostered children” was not very apt for a case where he is, under this provision, inspecting premises for children who are proposed to be privately fostered.
182. *Subsection (5)* amends section 67(5) so that the current duties of a local authority where it is not satisfied that the welfare of a privately fostered child is being satisfactorily safeguarded or promoted will apply in the case of children who are proposed to be privately fostered.
183. New section 67(6), inserted by *subsection (6)*, gives the Secretary of State the power to make regulations requiring local authorities to monitor the way in which they discharge their functions under Part 9 of the Children Act 1989. It is intended that such monitoring might include keeping a record of notifications received, monitoring compliance with timescales for visits and recording any prohibitions or requirements imposed along with reports of any visits and the outcomes of notifications. This information could then be collated in an annual report to Local Safeguarding Children Boards. The intention of this provision is to increase the focus of local authorities on private fostering.
184. *Subsection (7)* inserts a new paragraph 7A into Schedule 8 of the Children Act 1989. This will require local authorities to raise public awareness of the requirement to notify the local authority of private fostering arrangements.
185. *Subsection (8)* provides that the new regulation-making powers inserted into the Children Act 1989 by this section will, with respect to Wales, be exercised by the National Assembly for Wales.

Section 45: Power to establish registration scheme in England

186. *Subsection (1)* gives the Secretary of State the power to set up through regulations a scheme for the registration of private foster carers. More detail of the scheme is provided in the rest of the section.
187. *Subsection (2)* provides for regulations to make supplementary provision relating to the registration of people for private fostering and sets out some matters in relation to which such provision can be made.
188. *Subsection (2)(a)* says that the regulations may make provision as to how a person applies for registration and as to the procedure to be followed by the authority in considering an application. It is supplemented by *subsection (3)*, which highlights that the regulations may make it an offence for a person, in an application for registration as a private foster carer, knowingly to make a statement which is false or misleading in a material way.

*These notes refer to the Children Act 2004 (c.31)
which received Royal Assent on 15th November 2004*

189. *Subsection (2)(b)*, which makes for provision in the regulations as to the requirements to be satisfied before a person may be registered, is supplemented by *subsection (4)*, which sets out some detail of what these requirements might include. These are the requirements with which all prospective private foster carers will need to comply in order to be registered.
190. *Subsection (2)(c)*, which concerns the circumstances in which a person is disqualified from being registered, is supplemented by *subsection (5)*, which sets out in more detail the circumstances in which regulations may say that a person is disqualified. *Subsection (6)* allows the regulations to provide that the authority may determine whether a person is or is not disqualified. This means that even if someone might otherwise be disqualified the authority could decide that nevertheless they should be able to be registered.
191. *Subsection (2)(f)*, which makes provision in the regulations as to the imposition by a local authority of conditions on registration and as to the variation or cancellation of conditions, is supplemented by *subsection (7)*, which makes provision for what these conditions might include. These conditions are requirements imposed at the discretion of local authorities only on particular people. For example, a condition would be appropriate where a local authority wanted a particular person to do something to become suitable for private fostering (e.g. does something to their premises).
192. *Subsection 2(j)* makes for provision in the regulations as to other requirements that might be imposed on local authorities or registered persons. It is supplemented by *subsection (8)*, which makes provision for a requirement that a registered private foster carer obtain the consent of the authority before privately fostering a child so that the authority can check on the appropriateness of the arrangement for that particular child. If the authority is not satisfied with the arrangements for that child, then they may prevent the care of that child with that private foster carer. This will not affect the registered status of the private foster carer. *Subsection (8)* also makes provision relating to the giving of such consent by the authority.
193. In relation to *subsection 2(j)*, *subsection (9)* makes provision for a requirement that authorities undertake annual inspections in relation to registered private foster carers (whether or not they are at the time privately fostering children) and for the payment of fees by registered persons in respect of such inspections.
194. *Subsections (10) to (13)* deal with offences. *Subsection (10)* makes provision for regulations which may authorise a local authority to issue a notice to any person whom they believe to be privately fostering a child in their area while unregistered; and which may provide that a person would be guilty of an offence if, without reasonable cause, he/she continued to privately foster a child when such a notice was in force.
195. *Subsection (11)* makes provision for regulations which may provide for the offence of breach of requirements without reasonable excuse.
196. *Subsection (12)* makes provision for regulations which may provide for an offence where a person who is disqualified from registration fosters a child privately, unless he is disqualified because he lives in the same household as someone who is disqualified or in a household in which such a person is employed and did not know and had no reasonable grounds for believing that the other person was disqualified. This offence carries a more severe penalty, including possible imprisonment, reflecting the greater seriousness of the offence.
197. There is no offence merely for breach of a condition imposed by the local authority. If there was breach of a condition, the local authority would have to de-register the person before any criminal offence could bite.
198. *Subsection (14)* will enable the repeal of those parts of the Children Act 1989 which will be incompatible with the registration scheme and to add functions under this provision

to the functions listed in Schedule 1 of the Local Authority Social Services Act 1970 (making them social services functions).

Section 46: Power to establish a registration scheme in Wales

199. **Section 46** confers the same power on the National Assembly for Wales as Section 45 confers on the Secretary of State.

Section 47: Expiry of power in sections 45 and 46

200. **Subsection (1)** provides that if no regulations have been made under section 45 within four years of Royal Assent, that section will cease to have effect at that time.
201. **Subsection (2)** makes the same provision for Wales.
202. **Subsections (1) and (2)** operate independently, so if regulations are not made in England within the four year period, the power in section 45 expires even if regulations have been made under section 46 in Wales (and vice versa).

Section 48: Child minding and day care

203. This section gives effect to Schedule 4.

Schedule 4: Child minding and day care

204. This Schedule makes minor amendments to Schedule 9A of the Children Act 1989 which was introduced by the Care Standards Act 2000.
205. **Paragraph 2** enables conditions imposed by a court or tribunal upon a child minder or day care provider's registration to be treated in the same way as conditions imposed by the registration authority. This will clarify the status of conditions imposed by a court or tribunal and the enforcement action that may be taken by the registration authority if these conditions are breached.
206. **Paragraph 3** makes clear that fees for registration as a child minder or day care provider are payable on application for registration and are non-refundable.
207. **Paragraph 4** creates more flexibility in the way that the registration authority can levy ongoing fees by removing the requirement that fees be 'annual'.
208. **Paragraph 5**. Under Schedule 9A, a person may be disqualified for registration for child minding or day care. That has the result not only that the person may not be registered, but that he may not be concerned in certain ways with the provision of day care (paragraph 4(4) of the Schedule) or be employed in the provision of day care (paragraph 4(5)). However, disqualification may be waived (paragraph 4(3A)). The purpose of the amendment is to clarify that waiver of disqualification may be granted not only for registration itself but also for the purposes of the prohibitions in paragraphs 4(4) and 4(5).
209. **Paragraph 6** removes the requirement upon the registration authority to make an assessment as to whether all persons looking after children are suitable to do so, and all persons living or working on the day care premises are suitable to be in regular contact with children. As part of its determination as to whether the applicant is qualified for registration, the registration authority will check that the employer has appropriate procedures in place to make suitability assessments, thereby enabling him to qualify for registration. The registration authority will continue to assess the suitability of the person in charge of a day care setting and to assess that the applicant is qualified for registration under section 79F.
210. **Paragraph 7** provides that Part 10A of the Children Act 1989 does not apply to the provision of day care in a hotel (or other similar establishment) for children staying in that hotel where the day care is provided only between the hours of 6.00 p.m. and 2.00

*These notes refer to the Children Act 2004 (c.31)
which received Royal Assent on 15th November 2004*

a.m. and the person providing the day care (which could be the hotel or an agency) does so for no more than two different clients at the same time.

211. *Paragraph 8.* At present a person who is disqualified from registration for providing day care may not be concerned with the management of day care, or have any financial interest in the provision of day care. *Paragraph 7* removes the prohibition on disqualified persons having a financial interest in day care, and limits the scope of the prohibition relating to management to disqualified persons who are *directly* concerned with the management of day care.
212. *Paragraph 9* clarifies that unincorporated associations can be registered in their own name rather than in the name of individuals who make up a particular association. It ensures that enforcement action can be taken against the association as a whole as well as, where appropriate, against responsible individuals.

Section 49: Payments to foster parents

213. This section relates to payments made to foster carers in England and Wales.
214. *Subsection (1)* enables an order to be made making provision for the level of payments to be made to foster parents caring for looked after children placed with them by local authorities (including those with whom children are placed through independent fostering agencies) and to foster parents caring for children placed with them by voluntary organisations. *Subsection (2)* provides for such an order to be made by the Secretary of State in relation to England and by the Assembly in relation to Wales.
215. *Subsections (3) and (4)* amend the Children Act 1989 to ensure that the discretion given to local authorities and voluntary organisations to decide rates of payment to foster carers is subject to an order under this section.
216. *Subsection (4)* of section 66 provides that the first order by the Secretary of State making provision for payments to foster carers must be approved by resolution of both Houses of Parliament.

Local authority services

Section 50: Intervention

217. This section allows the Secretary of State or National Assembly for Wales to intervene where local authorities are failing to discharge functions relating to children's services to an adequate standard. It does so by extending existing powers of intervention relating to education functions.
218. The section applies section 497A of the Education Act 1996 (power to secure proper performance of LEA's functions) to functions which are relevant functions for the purposes of the sections. The relevant functions are set out in *subsection (2)* and include social services functions relating to children, functions in relation to children leaving care and functions under sections 10 and 12 of the Act (sections 25 and 29 in relation to Wales).
219. The Secretary of State's power to give a direction under section 497A arises where he is satisfied that a local authority is failing in any respect to perform any relevant function of a local authority to an adequate standard (or at all). The same test will accordingly apply in relation to the power as extended by the section.
220. *Subsection (4)* makes clear that the ancillary provisions of sections 497AA and 497B apply where the power in section 497A is exercised pursuant to this section.
221. *Subsection (6)* ensures that, where a direction is given under section 497A in relation to education functions, it can also extend to the functions referred to in *subsection (2)* (so that it is not necessary to give two separate directions).

222. This section does not restrict the use of other powers of intervention.

Section 51: Inspection of local education authorities

223. This section amends section 38 of the Education Act 1997 (inspection of LEAs). At present Ofsted (in England) or Estyn (in Wales) may inspect functions relating to the provision of education by a local education authority for persons of compulsory school age or persons above or below that age who are registered as pupils at a school maintained by the authority.
224. This amendment allows Ofsted (in England) to review *any* local education authority function, with the exception in England of functions which fall within the Adult Learning Inspectorate's remit. By virtue of the amendment Estyn (in Wales) will be able to review any local education authority function *and* functions under sections 25 (co-operation to improve well-being: Wales) and 26 (children and young people's plans: Wales), so far as those functions relate to education, training or youth support services.

Section 52: Duty of local authorities to promote educational achievement

225. This section amends section 22 of the Children Act 1989, which set out the general duties of a local authority in relation to each child whom it is looking after. There is a duty in subsection (3) to safeguard and promote the welfare of the child. This section inserts a new subsection (3A) which places a particular duty on the local authority to promote the child's educational achievement.
226. A looked after child is defined in section 22 as a child in care (i.e. under a care order) or a child provided with accommodation by the local authority in exercise of its social services functions. There is evidence that this group of children achieve significantly less well than their peers, and that this under-performance is due at least in part to a lack of effective support from local authorities as 'corporate parents' of these children.
227. The new duty will mean that local authorities will have to give particular attention to the educational implications of any decision about the welfare of any child they are looking after. That might be for instance the need to organise a suitable school placement at the same time as arranging a new care placement.

Section 53: Ascertaining children's wishes

228. This section amends sections 17, 21 and 47 of the Children Act 1989, under which a local authority has a duty to safeguard and promote the welfare of children in need in their area by providing suitable services to those children. The amendment requires a local authority to ascertain any such child's wishes in relation to those services and to give those wishes due consideration before determining what (if any) services to provide. Guidance issued under section 7 Local Authority Social Services Act 1970 in relation to section 17 already places considerable emphasis on listening to children and taking account of their wishes. Section 53 gives statutory backing to that approach.

Section 54: Information about individual children

229. This section amends section 83 of the Children Act 1989 by inserting a new subsection (4A). Section 83(4A) enables particulars required to be transmitted by local authorities and voluntary organisations under subsections (3) and (4) respectively, to include information that relates to and identifies individual children. The type of information transmitted under subsections (3) and (4) will include name, a unique pupil reference number, and postcode. The information transmitted will be used to fulfil the Secretary of State's functions in relation to children and young people. In particular information on individual children will be used by the Secretary of State for statistical analysis in order to inform and review policy about children and young people. It will also be used to ensure that local practitioners have all the relevant and accurate information they need to carry out their functions.

Section 55: Social services committees

230. This section removes the requirement on local authorities in England and Wales not operating executive arrangements under the Local Government Act 2000, to establish a social services committee by repealing section 2 of the Local Authority Social Services Act 1970, and related provisions of that Act (*subsection (1)*). The requirement in England to have a director of children's services means that there can no longer be single 'social services committees'. All references in law to social service committees are therefore repealed. In addition, local authorities in England will no longer have social services departments. Therefore references to such departments are removed.
231. *Subsections (2) to (5)* make amendments to Schedule 1 to that Act, section 63(8)(a) of the Health Services and Public Health Act, paragraph 4(1) of Schedule 1 to the Local Government and Housing Act 1989 and section 102 of the Local Government Act 2000, which are consequential to this repeal.

Schedule 5: Repeals, part 4 social services committees and departments

232. The amendments in this part of this Schedule make a number of repeals which are consequential on the removal of the requirement to have social services committees made in section 55. This requirement only applied to authorities in England and Wales not operating executive arrangements under the Local Government Act 2000.
233. Some other amendments in this part of this Schedule relate to the removal of anachronistic references to social services departments in existing legislation, but do not affect the meaning or effect of any of the Acts amended. The amendments have been made to avoid any potential ambiguity given the potential for authorities to split social services functions between two departments (children and adult).

Other provisions

Section 57: Fees payable to members of independent review panel

234. *Section 57* amends section 12 of the *Adoption and Children Act 2002 (c. 38)* (independent review of determinations). Section 12 provides for the establishment of a review procedure in respect of qualifying determinations made by adoption agencies. This is intended to provide prospective adopters with a right to request a referral to a panel established by the appropriate Minister, where an adoption agency indicates that it is minded to turn down their application to adopt. Under subsection (4) of section 12 the appropriate Minister may delegate functions in relation to the panel to an organisation to perform on his behalf. Under subsection (3) of section 12, regulations may provide for the duties and powers of a review panel, its administration and procedures, appointment of panel members, payment of expenses, the duties of adoption agencies in connection with reviews and the monitoring of reviews.
235. *Section 57* amends section 12(3)(d) (power to make provision as to the payment of expenses of members of a panel), by replacing the words 'expenses of' with 'fees to'. This will provide for regulations to be made to provide for the payment of fees to members of a panel constituted under section 12. This will help the organisation to which the appropriate Minister delegates his functions to recruit panel members and is consistent with provision in the *Adoption and Children Act 2002 Act*, which will allow adoption agencies to pay fees to their adoption panel members.

Section 58: Reasonable punishment

236. *Section 58* removes the defence of reasonable chastisement in any proceedings for an offence of assault occasioning actual bodily harm, unlawfully inflicting grievous bodily harm, causing grievous bodily harm with intent, or cruelty to a child. It also prevents the defence being relied upon in any civil proceedings where the harm caused amounted to actual bodily harm, which has the same meaning as it has for the purposes of section 47

*These notes refer to the Children Act 2004 (c.31)
which received Royal Assent on 15th November 2004*

of the Offences Against the Person Act 1861. The defence would still be available in proceedings before the Magistrates Court for common assault on a child.

237. The section removes the defence by providing that battery of a child cannot be justified as reasonable punishment. Battery is any unwanted application of force to the body of another and is more commonly called “assault”. However it has long been recognised by the law that a parent or person with parental authority may use reasonable punishment to correct a child. This is the defence of reasonable chastisement or “reasonable punishment”. Other defences to battery are not affected by section 58.
238. *Subsections (1) and (2)* remove the defence in relation to the offences mentioned above. The parent is thus in the same position as if he had assaulted an adult or a child over whom he exercised no parental role.
239. *Subsection (3)* removes the defence in civil proceedings for any battery if the battery caused actual bodily harm. *Subsection (4)* provides that ‘actual bodily harm’ in *subsection (3)* has the same meaning as has been established in relation to criminal proceedings.
240. *Subsection (5)* repeals section 1(7) of the Children and Young Persons Act 1933 in consequence of *subsection (2)(c)*.

Section 59: Power to give financial assistance

241. This section amends section 14 of the [Education Act 2002 \(c. 32\)](#) to extend the powers of the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) to give, or make arrangements for the giving of, financial assistance. *Subsections (2) and (3)* detail the purposes of the new powers: the promotion of welfare of children and their parents, and the provision of support for parenting. Children are defined for these purposes as under twenty. These new purposes add funding powers for children’s services to the existing broad education funding powers. The effect (in relation to England) is to provide a statutory basis for giving financial assistance to activity across the new wider responsibilities of the Secretary of State for Education and Skills. These include responsibilities for children’s services and parenting following the creation of the position of Minister for Children, Young People and Families.

Section 60: Child safety orders

242. This section extends the existing circumstances in section 8 of the Crime and Disorder Act 1998 in which courts can make parenting orders and amends the power to make child safety orders contained in sections 11-13 of the 1998 Act. At present, the only sanction for breach of a child safety order is a care order. That sanction is being removed by *subsection (4)*. Instead, we are creating (by *subsection (2)*) the possibility of the making of a parenting order.
243. Child safety orders can be made in a Family Proceedings Court when: a) a child below 10 has committed an act that would have been an offence were he 10 or over, b) imposing the order is necessary to prevent a child below 10 committing such an act, c) a child below 10 has contravened a ban imposed by a local child curfew scheme, or d) a child below 10 has behaved in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the child.
244. The order places the child under the supervision of a responsible officer from either a social services department or youth offending team, and requires the child to comply with specified requirements. The purpose of the requirements is to ensure the child receives appropriate care, protection, and support, is subject to proper control, and to prevent the repetition of the kind of behaviour which led to the order being made.
245. Courts may already make a parenting order under section 8 of the 1998 Act when they make a child safety order. *Subsection (2)* creates an additional circumstance in which a court can make a parenting order. This is when a court determines that a child has failed

to comply with a requirement of a child safety order. The court will only be able to make a parenting order in this circumstance where it is desirable in the interests of preventing a repetition of the kind of behaviour which led to the child safety order being made. All other provisions currently relating to parenting orders made in the same proceedings as child safety orders under section 8(1)(a) of the 1998 Act will apply equally to these new parenting orders.

246. This new power allows a parenting order to be made at a later stage. It could be used when there were insufficient grounds to make a parenting order when the child safety order was made, for example, where it appeared that the parent had done everything he could to prevent the child misbehaving but it had since emerged that one would be desirable in the interests of preventing repetition of the behaviour which led to the child safety order being made. This may be because a parent is no longer co-operating, or that co-operation from a different parent or guardian is needed to secure the child's compliance in meeting the requirements of the child safety order.
247. Section 11(4) of the 1998 Act restricts the maximum duration of a child safety order to three months other than in exceptional circumstances. *Subsection (3)* extends the maximum duration to 12 months. This gives more time to address the child's problems and is also in line with the maximum duration of a parenting order, with which the child safety order is usually linked. By making the permitted duration the same, an order on a child can be supported by a matching order on the parent over the same period to address the behaviour of the child.
248. *Subsection (4)* removes from the court the power, when a child safety order is breached, to make a care order at a lower threshold than is required by section 31 of the Children Act 1989. This power had been seen as a barrier to the use of the child safety order. If the court believes that the parents, with appropriate support, could secure the child's compliance with the order, it could make a parenting order under *subsection (2)*. If a parenting order had already been made with requirements mirroring the child safety order's requirements, the court could fine or impose a community sentence on the parent for breach of the parenting order. If the court concluded that the child is beyond parental control it could, under section 37 of the Children Act 1989, direct the local authority to consider applying for a care order. The court would also retain its power to vary or discharge the order.
249. All other provisions relating to child safety orders under the 1998 Act will remain the same.

Section 61: Children's Commissioner for Wales: powers of entry

250. **Section 61** gives the Children's Commissioner for Wales the power to enter premises, other than private homes, to interview children when reviewing and monitoring the functions of and arrangements made by the Assembly and other specified persons. The power does not apply to the Commissioner in the discharge of his function of conducting examinations or considering and making representations on any matter, under sections 74 and 75A of the Care Standards Act 2000.

Section 62: Publication of material relating to legal proceedings

251. **Section 62(1)** amends section 97 of the Children Act 1989 to make clear that the publication of material from family proceedings which is intended, or likely, to identify any child as being involved in such proceedings (or the address or school of such a child) is only prohibited in relation to publication of information to the public or any section of the public. This section will make the effect of section 97 less prohibitive by allowing disclosure of such information in certain circumstances. In effect, this means that passing on information identifying, or likely to identify, a child (his school or his address) as being involved in court proceedings to an individual or a number of individuals would not generally be a criminal offence.

252. It is envisaged that rules of court will set out the cases in which publication of information relating to children is authorised. Being authorised by rules of court, such publication will not constitute contempt. *Subsection (2)* amends section 12 of the Administration of the Justice Act 1960 to make it clear that the reference in subsection (4) to publication which does not constitute contempt includes cases where the publication is expressly authorised by rules of court.
253. The remaining subsections amend rule-making powers to enable the rules to be made.

Section 63: Disclosure of information by Inland Revenue

254. **Section 63** amends Schedule 5 of the Tax Credits Act 2002 to enable the Inland Revenue to share Tax Credit, Child Benefit or Guardian's Allowance information (except where it relates to a person's income) with local authorities (or, in Northern Ireland, Health and Social Services Boards) for the purposes of enquiries and investigations relating to the welfare of a child under the legislation specified in *subsection (2)*.
255. *Subsection (3)* enables those authorities to pass this information on to other people or bodies (e.g. the police) for the purpose of such enquiries or investigations without the consent of the Inland Revenue. It also enables authorities to pass information from the Revenue to others for the purposes of civil or criminal proceedings or where the Revenue would have had the legal power to do this themselves. However, *subsection (4)* provides that, in these circumstances, authorities are required to seek permission from the Revenue beforehand.
256. In any other cases, *subsection (5)* makes it an offence for a staff member of an authority to disclose information provided to him/her under *subsection (1)* unless the disclosure is made:
- in accordance with an enactment or order of court,
 - with the consent of person to whom the information relates, or
 - in a way that prevents identification of the person to whom the information relates.
257. This places a criminal sanction against unauthorised disclosure by the authority's staff, which reflects the existing Inland Revenue criminal sanction against unauthorised disclosure of information by Revenue staff. *Subsection (6)* provides that a person charged with this offence has the defence that he/she reasonably believed that his/her disclosure was lawful. In practice this means that the onus of proof is on the defendant. If found guilty, *subsection (7)* would mean that a person is liable to a maximum of two years imprisonment.
258. **Section 67(7)(k)** provides that *section 63* took effect on the day on which the Children Act 2004 received Royal Assent.

Section 67: Commencement

259. **Part 1**, which establishes the Children's Commissioner, section 59, the power to give financial assistance, and section 63, which allows disclosure of information by the Inland Revenue will come into force on Royal Assent.
260. **Sections 45 to 47**, which create the power to establish by regulations a registration scheme for private foster carers in England and Wales, section 49 which creates the power by order to make provision on payments to foster carers, and section 58 which restricts the use of the defence of reasonable chastisement, will come into force two months after Royal Assent.
261. The rest of the Act's provisions will be brought into force on dates appointed by the Secretary of State or, where specified, by the National Assembly for Wales by commencement order. In particular:

*These notes refer to the Children Act 2004 (c.31)
which received Royal Assent on 15th November 2004*

- Sections 25 and 31 will be commenced by the National Assembly for Wales except where their provisions relate to non-devolved bodies in which case they may only be commenced with the consent of the Secretary of State.
- Section 28 will be commenced by the National Assembly for Wales insofar as its provisions relate to devolved bodies. Provisions relating to non-devolved bodies will be commenced by the Secretary of State after consulting the National Assembly for Wales.

Hansard References

262. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard Reference</i>
<i>House of Lords</i>		
Introduction	3 March 2004	Vol. 658 Cols. 657-8
Second Reading	30 March 2004	Vol. 659 Cols. 1208-310
Committee	4 May 2004	Vol. 660 Cols. 1036-96
	6 May 2004	Vol. 660 Cols. 1218-57, 1273-344
	20 May 2004	Vol. 661 Cols. 878-914, 925-1000
	24 May 2004	Vol. 661 Cols. 1052-124, 1137-86
	27 May 2004	Vol. 661 Cols. 1441-88, 1507-24
Report	17 June 2004	Vol. 662 Cols. 870-902, 922-1004
	21 June 2004	Vol. 662 Cols. 1013-30, 1043-76
	22 June 2004	Vol. 662 Cols. 1208-34
	5 July 2004	Vol. 663 Cols. 518-603
Third Reading	15 July 2004	Vol. 663 Cols. 1414-97
<i>House of Commons</i>		
Introduction	19 July 2004	Bill 144 2003/4
Second Reading	13 Sept 2004	Vol. 424 Cols. 1000-88
Committee	12 Oct 2004, 14 Oct 2004, 19 Oct 2004 and 21 Oct 2004	Hansard Standing Committee B
Report and Third Reading	2 Nov 2004	Vol. 426 Cols. 173-281
Lords Consideration of Commons Amendments	10 Nov 2004	Vol. 666 Cols. 993-1008
Royal Assent — 15 November 2004		House of Lords Hansard Vol. 666, Col. 1185

*These notes refer to the Children Act 2004 (c.31)
which received Royal Assent on 15th November 2004*

House of Commons Hansard Vol. 426,
Col. 1009