

# CHILDREN ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4 – Advisory and Support Services for Family Proceedings**

##### **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 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.

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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:
- **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.

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which received Royal Assent on 15th November 2004*

## 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>
<b><i>House of Lords</i></b>		
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
<b><i>House of Commons</i></b>		
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
<b>Lords Consideration of Commons Amendments</b>	10 Nov 2004	Vol. 666 Cols. 993-1008
<b>Royal Assent</b> — 15 November 2004		House of Lords Hansard Vol. 666, Col. 1185
		House of Commons Hansard Vol. 426, Col. 1009