The Government Reply to the Report from the Joint Committee on the Draft Children (contact) and Adoption Bill Session 2004-05 HL Paper 100-I/HC 400-I

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Cm 6583

£5.50

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Presented to Parliament by the
Secretary of State for Education and Skills
By Command of Her Majesty
June 2005

Cm 6583

£5.50

MINISTERIAL FOREWORD

I am most grateful for the time and effort the committee has devoted to the scrutiny of this important Bill. This is a piece of legislation that will make a real difference to children and families experiencing parental separation.

The focus of the draft Bill, though it sits within the wider context set by the Green Paper *Parental Separation: Children's Needs and Parents' Responsibilities*, is on the 10 per cent of separating families who seek the help of the courts to settle the arrangements for their children. The children affected can be very vulnerable, and the measures in the Bill to facilitate contact and, where necessary, to enforce contact orders, are focussed on supporting them.

The Bill is also important in that it provides a statutory framework for the suspension of intercountry adoptions from specified countries where there are concerns about practices in relation to adoption, for instance about child trafficking.

I very much welcome the thoroughness of the committee's report and the breadth of views they have been able to reflect. We have considered each of their recommendations in detail, and believe that this report has offered an opportunity to make some real improvements to the Bill before it is introduced to Parliament.

There are some recommendations with which the Government is not content, or where, while accepting the spirit of the recommendation, we have proposed a slightly different approach. We set out below our response to each recommendation, and the reasoning behind it.

There is no question, though, that this will be a better Bill when it is introduced to Parliament as a result of the committee's work. Our thanks go to Clive Soley and the committee for helping us to improve a Bill that will have a genuine impact in improving the lives of the children it affects.

Maria Eagle

Parliamentary Under Secretary of State for Children and Families

THE JOINT COMMITTEE'S RECOMMENDATIONS AND THE GOVERNMENT'S RESPONSE

CHAPTER 1: INTRODUCTION

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

1. We entirely support this point. The thrust of the policy set out in the Green Paper *Parental Separation: Children's Needs and Parents' Responsibilities* was to aim to reduce the number of cases involving contested court proceedings, and to provide greater support to the 90 per cent of families who do not involve the courts. However, we recognise that those who turn to the courts need the family justice system to serve them better, and this Bill responds to the calls of the judiciary for greater flexibility to deal with these difficult cases.

CHAPTER 2: CONTACT ACTIVITIES (CLAUSE 1)

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

2. We would be concerned about the implications that would arise if contact orders were to be used to force someone, against their wishes, to have contact with a child. The child's welfare must be the paramount consideration in making decisions about their upbringing, and there are serious issues raised about the potential distress, or even harm, such contact could cause to the child or children involved.

3. Having said that, it is open to the court, under section 11(7) of the Children Act 1989, to impose conditions upon a contact order which must be complied with, including by any person in whose favour the contact order is made. That could include, for example, making it a condition of the order that the non-resident parent attends the ordered contact at a specified time and place. If a court does this, then a breach of that condition by not attending contact would constitute a breach of the order.

4. Further, if a resident parent believes that the non-resident parent is not fulfilling his or her responsibilities, for instance by failing to attend contact provided for by the court order, he or she is of course free to seek a variation or discharge of the contact order.

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

5. We are grateful to the committee for their consideration of this issue, which we have looked at carefully. In practice, there are two sorts of cases: those where an order proceeds by consent because the terms of the order are agreed by the parties in their entirety, and cases where one or more matters are in dispute. Unopposed applications are considered by the court, and if the court agrees that the terms of the agreement are satisfactory, an order may be made. If there is any disagreement, whether about the making of an order itself or about one or more aspects of the contents of that order, the case is "opposed".

6. We understand the concern raised by the Committee and are considering what, if anything, needs to be done in the Bill to put beyond doubt that we are seeking to capture cases where not only the making of a contact order per se is opposed, but also where the specific detail of such an order is opposed.

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

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

7. We agree that perpetrator programmes may be a potentially valuable form of contact activity, and the Bill is intended to allow the courts to require parties to attend such a programme as a contact activity where this is appropriate. In implementing the Bill, we will consider carefully the availability and cost of such programmes, and any action Government can take to support their availability.

8. We note the issue the committee raises about the interaction with activities run by the National Offender Management Service (NOMS). It is important to recognise that perpetrator programmes are also run and overseen by voluntary organisations, such as Respect and the Domestic Violence Intervention Project. Some of these programmes, where they are available, might well be more suitable for parties involved in contact proceedings than Government-run programmes that are more focussed on offenders.

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

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

9. We are grateful to the committee and to the witnesses who gave evidence on this important aspect of the Bill. The Government has always been quite clear that it is our view that it is generally beneficial for a child to have a meaningful relationship with both parents *so long as it is in the child's best interests*. In determining what is in those best interests, it will of course be necessary to take into account considerations of safety.

10. It was always our intention that courts should take into account any concerns about safety when deciding whether to make use of the new provisions in the Bill. We have further considered the provisions about contact activities from this perspective, and it is our view that decisions to make contact activity directions or conditions would be covered by the 'welfare checklist' at section 1(3) of the Children Act 1989, which states explicitly that a court, when considering whether to make any contact order, must have regard to "any harm which [the child] has suffered, or is at risk of suffering". Further, the clarification of the definition of 'harm' in the Children Act 1989, made through the Adoption and Children Act 2002, puts beyond doubt the fact that the child witnessing others being harmed would be relevant to the welfare checklist. This means that, were the child to witness any ill-treatment of adults, this would have to be properly considered by the court.

11. It is also important to remember that the welfare of the child is the paramount consideration of the court in deciding whether to make a contact activity direction or condition, meaning that they should not make such a direction or condition if it would compromise the child's welfare.

12. The new 'gateway forms', which came into use on 31 January 2005, will allow courts to hear about allegations of domestic abuse at the outset of proceedings. This means that in considering whether to make a contact activity direction or condition, the court will be aware of any issues of domestic abuse, and able to take these into account in deciding what is appropriate.

13. We therefore do not consider that any amendment is needed to the Bill in respect of contact activities. Separate issues are raised by enforcement orders, in relation to which, as with contact activities, it had always been our intention that courts should not make an enforcement order where it is not safe to do so.

14. The Bill makes clear that an enforcement order can only be made if an order is breached *without reasonable excuse*. Such an excuse could of course include genuine concerns about safety, either of the child or of the parent. In response to the concerns raised, we acknowledge that a more explicit signal of this is needed, and will consider how best to ensure that this is clearly understood.

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

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

15. While we would not wish to be prescriptive about the activities that may be classed as contact activities, and do not wish to impose a layer of bureaucracy by introducing a new formal system of accreditation, we recognise that it will be important for there to be sufficient clarity about the type of activity that is intended to be captured, and about the minimum standards which should be met by organisations providing such activities.

16. We are already supporting the National Association of Child Contact Centres (NACCC) in setting national standards for child contact centres. Centres that are members of NACCC are being encouraged to move from affiliated to accredited status, adhering to a national definition of child contact and national standards of delivery, with accreditation from the National Association. Central government funding is supporting the provision of training and support to contact centre staff to effectively deliver their objectives in support of outcomes for children and parents.

17. We will therefore make available information about the type of activities that we consider might be appropriate as contact activities, and on what type of accreditation providers might wish to seek. This will be intended only as a general guideline rather than being firm rules. It will be for the courts to take a view as to what is appropriate in a specific case when deciding to make a contact activity direction or condition.

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

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

18. The committee is correct to say that the success of the new powers provided for by the Bill will depend on the availability of activities on the ground. Some information about this is already available, for instance through the directory maintained by the National Association of Child Contact Centres, which provides information about the availability of such centres. In addition, we are working to identify what provision is available in terms of child contact services throughout the country, and will consider what the Government can do to help address gaps in provision.

19. We are already committed, through the *Next Steps* document published in January, to provide £7.5 million in 2006/7 and 2007/8 to develop services for supporting contact.

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

20. The Government remains committed to offering parties the strongest possible encouragement to agree to mediation or other forms of dispute resolution and, with the judiciary, will consider changes to Rules of Court or Practice Directions.

21. As the then Minister for Children made clear in her evidence to the committee, the Bill will allow courts, by making a contact activity condition or direction, to refer parties to an information session about mediation. We agree with the committee that this might well be of benefit to some parties, and that it is important to distinguish this from compulsory mediation, which we continue to believe is undesirable, and which would too often be counter-productive.

22. We intend that referral to such information sessions about mediation would be a form of contact activity, as provided for by the Bill, rather than relying on an amendment to (the un-commenced) Part 2 of the Family Law Act 1996, which the Government is committed to repeal when Parliamentary time permits.

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

23. We are grateful to the committee for their consideration of the Family Resolution Pilot Project. The Project is a pilot at this stage and we do not plan to make any decisions about its future until the evaluation is complete. This is being carried out by independent evaluators from the University of East Anglia. Elements of the project might well be suitable for use as contact activities, and courts would be able to require attendance on those that fall within the definition of contact activities in the Bill

24. A report from the evaluation is expected during 2006. We will give full consideration to the issues raised by the evaluation and will revisit the committee's recommendation at that point.

CHAPTER 3: FACILITATING AND MONITORING CONTACT (CLAUSE 2)

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

25. We note the committee's comments, and agree that it will be very important to ensure CAFCASS is appropriately resourced for any net additional tasks prior to full implementation of any legislation that may result from Parliament's consideration of the Bill.

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

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

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

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

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

26. As we made clear in the *Next Steps* paper published in January that we intend to legislate, as needed, to revise the arrangements for the use of Family Assistance Orders (FAOs), and are very grateful to the committee for considering this issue in detail.

27. We will include provision in the Bill for the reform of FAOs, by removing the requirement that they be made only in 'exceptional circumstances' and extending the maximum time for which an order can be made from 6 months to 12 months.

28. We do not agree, though, that the requirement to obtain consent should be removed. While we appreciate the committee's intention that FAOs should be made in as many cases as would benefit from them, we do not believe that it would be constructive to make an order to 'advise, assist, and befriend' an unwilling, or even hostile, party. It is, of course, only those adult parties named in the FAO who need give consent, rather than all parties to the case, meaning that where an FAO is made in respect of one parent but not the other, the other could not withhold consent and thereby prevent the FAO being made.

29. Our intention is that the Bill should cover two distinct concepts: a reformed FAO, which will remain a facilitative measure which can only be used with the consent of those parties named in the order; and, separately, provision for courts to require CAFCASS to carry out monitoring of compliance with a contact order (in specified cases), a contact activity or an enforcement order. This monitoring role will not require any consent by parties, and will be used if the court considers it appropriate in the circumstances. In determining what is appropriate, we would expect that courts would wish to consult CAFCASS prior to making the order, and to take into account the availability of local CAFCASS resources.

30. We note also the committee's recommendation that FAOs should only be administered by CAFCASS practitioners or Welsh family proceedings officers, rather than local authorities. It is of course already existing practice, provided for by the Children Act 1989, that such orders may be supervised by either CAFCASS officers (or Welsh family proceedings officers) or by local authorities. We do not propose to move this responsibility from local authorities, in recognition of the fact that, in some cases, a local authority might be better placed to supervise an FAO, for instance because the local authority might already be actively involved in providing services to the child and family.

CHAPTER 4: ENFORCEMENT ORDERS (CLAUSE 3)

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

31. While we anticipate that the courts will consider all of the options available to them in determining what is appropriate in a given case, it is important that the Bill provides them with a flexible range of options to respond to individual circumstances. This was the principle that underpinned the recommendations in the *Making Contact Work* report prepared by the Children Act Sub-Committee, and we would not want to reduce this flexibility. It is our intention, in any case, that contact activities should be available at any stage during proceedings. It will be open to a court, following an application for enforcement, to decide to add a contact activity condition to the contact order rather than imposing an enforcement order.

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

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

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

32. We accept the committee's recommendation that a curfew order should not be made solely as a punishment. The policy intention behind the proposed legislation has been to give the courts a range of options, but our view is that the focus should be on facilitation wherever that is possible and likely to be effective.

33. We have considered the committee's alternative proposal for a "time and place requirement". We recognise and support the committee's intention to ensure that courts are able to make orders that require contact to take place at a specific place and time so as to make contact work for the child. We note that, as the committee's report points out, much of the content of such a requirement as proposed could already be set out in a condition attached to a contact order under section 11(7) of the Children Act 1989.

34. The committee also considered that a "time and place requirement" could specify the consequences of a breach of the requirement. We recognise the committee's intention to send a warning signal and agree that it is appropriate to do so. However, we think that, in fact, it should be made plain to parties when the contact order is made what the consequences of a breach might be, and we intend that this should be made plain on that initial contact order itself, and not only after there has been a breach. We intend that provision for contact orders to be endorsed with the consequences of breaching them should be made in court Rules.

35. We therefore believe that the committee's aim of ensuring courts can specify how contact is to happen in order to facilitate productive contact, and to ensure that fair warning is given of the consequences of breaching an order, is the right one, but can be achieved without further changes to primary legislation.

36. We are grateful also to the committee for its consideration of the difficult issue of how to approach compliance monitoring and whether electronic tagging might be an appropriate provision, something about which we had already signalled our doubts. We appreciate the committee's consideration of this, and agree with them that electronic tagging would not be a proportionate response.

37. In recognition of this, and in the spirit of the committee's other recommendations in relation to curfews and compliance monitoring, we will remove from the Bill the power to impose curfews or compliance monitoring requirements (that is, electronic tagging).

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

38. We are grateful to the committee for its consideration of this point, and for the opportunity it has provided to make quite clear what the position is. The Bill does not in any way affect the powers of courts to deal with contempt and we will make this clear in, for example, the Explanatory Notes to the Bill. However, it is not necessary to specify this on the face of the Bill. The courts will still have access to these contempt powers as a last resort, but we hope that the menu of new options provided by the Bill will be more effective in making contact work.

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

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

39. The intention is that the unpaid work requirements will form part of the scheme operated by the National Offender Management Service (NOMS). As the committee rightly points out, there would be very serious practical and, perhaps, ethical difficulties in linking unpaid work to work with children in the way some witnesses had suggested.

40. We were also concerned that to set up a new and separate system for what we anticipate will be a small number of cases per year would involve a disproportionate cost. We therefore concluded that it would be more appropriate to make use of the existing scheme which is already set up to ensure that community service activities are appropriate to the individuals carrying them out.

41. Thus, those against whom enforcement orders are made will participate in the scheme for unpaid work operated by NOMS. Thus, those against whom enforcement orders are made will participate in the scheme for unpaid work operated by NOMS. Within this system, there is discretion at a local level for probation officers to determine the type of work which should be undertaken, taking into account the individual concerned and their circumstances, as well as the details of the infraction concerned.

42. Where the court has asked a CAFCASS officer, or Welsh family proceedings officer, to monitor compliance with the order, the responsible officer under the NOMS scheme will advise the CAFCASS officer, or the Welsh family proceedings officer, of any breach, and they in turn will report to the court. The resource implications of this process in terms of the cost of administering an unpaid work requirement are quantified in the Regulatory Impact Assessment, where it is estimated by the Home Office that an unpaid work order, on average, costs about £2,000.

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

43. We are aware that the welfare of the child was an issue to which the committee gave particularly thorough consideration, for which we are grateful. However, we do not agree that it would be clearer to leave the position uncertain by having nothing on the face of the Bill to say what the position of the child's welfare should be in respect of decisions made in relation to enforcement orders.

44. The position set out in section 1 of the Children Act 1989 is that the welfare of the child is the paramount consideration of the court when considering any question with respect to the upbringing of a child.

45. Current caselaw makes it clear that the enforcement of orders made under the Children Act 1989, which enforcement is via the law of contempt, is not primarily a matter relating to the upbringing of a child. Rather, it is about addressing a breach of the terms of what a court has ordered. For that reason, case law indicates that the welfare of the child is a material consideration in such proceedings, but not the paramount consideration.

46. Our view is that the welfare of the child is important at every stage, which is why the Bill makes clear that a court must consider that welfare in making decisions about enforcement orders. We must recognise, though, that in making the original contact order, the court would have decided that what it was ordering was best for that child, with welfare as the paramount consideration.

47. Thus, in deciding whether to make an enforcement order, the court should not be bound by having the welfare of the child as its paramount consideration, but nonetheless should consider the welfare of the child in deciding, most importantly, whether the enforcement order is necessary to secure compliance with the contact order which *is* in the child's best interest.

48. We believe that this position should be explicit on the face of the Bill, and that to leave it to case law is not sufficiently clear. We therefore do not agree with this recommendation.

CHAPTER 5: COMPENSATION FOR FINANCIAL LOSS (CLAUSE 4)

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

49. The Government has long been aware of the difficulties with the current system of civil debt recovery. In 1998, it launched an Enforcement Review, from which led to a White Paper on 'Effective Enforcement' being published in March 2003. This sought to identify the problems with the system of enforcing civil debts, and suggest ways of tackling them. Some of the suggested measures, which did not require legislation, have already been put into effect, and we intend to bring forward a Courts and Tribunals Bill when Parliamentary time allows, which will introduce other reforms. In particular, the White Paper identified access to better information as the key to effective enforcement, and the Bill will include provisions designed to enable the courts to obtain such information.

50. We believe that the reforms will greatly improve the effectiveness of civil debt recovery, and will address the concerns of the Committee.

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

51. We are quite clear, and will make explicit in the explanatory notes to the Bill, that an application for compensation for financial loss may be made by any party to the proceedings, if they believe that any other party to the proceedings has failed to comply with the contact order, or a condition to it, and the breach of the order has caused them financial loss.

CHAPTER 6: WELFARE CHECKLIST IN CHILDREN ACT 1989

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

52. This is something to which the Government has been giving a great deal of consideration, as was indicated in the Government response to the recent Constitutional Affairs Select Committee report on family justice.

53. It is already clear, through case law, that the courts recognise the critical importance of the role of both parents in the lives of their children and that, unless there are cogent reasons against it, children are entitled to have a meaningful relationship with both parents after a parental separation.

54. The question, then, is about whether we should codify that case law in primary legislation. We are considering this carefully, and can see that, while it is not strictly necessary, there may be some merit in sending a positive signal to the courts. However, we do not agree that the welfare checklist is the correct place for such a provision, not least because of the checklist's wider application to public law cases. We will therefore consider this recommendation further, and look at what change, if any, should be made to primary legislation in order to signal the Government's support for the principle that children generally benefit from a meaningful relationship with both parents after separation, so long as it is safe and in their best interests.

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

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

55. It is helpful that the committee has pointed out the importance of this, and we are happy to confirm that any issues arising from judicial review proceedings will be taken into account in preparing the Bill for introduction to Parliament.

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

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

56. While we appreciate and support the committee's desire for greater consultation wherever possible, it was our intention that, in publishing these provisions for pre-legislative scrutiny we would, through this process, be giving an opportunity for Parliamentary and public examination of the proposals before any Bill was formally introduced to Parliament. We are grateful for the work the committee has done, including in obtaining the views of stakeholders, and believe the Bill will be better for it. As the committee observes, the draft provisions only provide a framework for the suspension of intercountry adoptions, with the detail to be set out in regulations. We will, of course, look to take the opportunity to consult stakeholders on a draft version of these before they are finalised.

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

57. We fully understand the committee's desire for greater clarity regarding when special restrictions may be imposed. Although we envisage that the principles of UNCRC and the Hague Convention would be taken into account by the Secretary of State, they may not be able to apply to every possible circumstance where special restrictions may be appropriate. We therefore do not accept this recommendation but will give further consideration to how greater clarity may be achieved.

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

58. We fully understand the committee's desire to offer support to stakeholders, particularly prospective adopters who might be affected by any suspension of intercountry adoptions from a particular country. Our primary focus, though, must be the protection of the children involved. There may be situations where a requirement to consult could have unfortunate implications for the welfare of those children through delay in introducing special restrictions or by triggering a rush to adopt before the special restrictions are introduced.

59. The committee argues that the length of the adoption process means that there would be time for consultation without triggering a rush to complete adoptions without due care. However, a significant part of the intercountry adoption application process is completed in the other country and beyond the direct control of the UK authorities. Although there are rigorous and timely procedures in England and Wales for considering intercountry adoption applications, this may not always be the case in other countries. Procedures in some countries might allow (or might be vulnerable to allowing) adoptions to be completed much more quickly, perhaps in circumstances in which improper financial gain is being made by any individuals or organisations involved in arranging adoptions.

60. We recognise there may be situations where we consider that it would be possible to consult relevant stakeholders without compromising the welfare of children and, where possible, we would seek to do so. However, we do not believe that this will be possible in all cases and we therefore do not accept this recommendation, because of the potential risk which it presents to the children we are aiming to protect.

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

61. We recognise there may be circumstances where it might be possible to make transitional arrangements without compromising the welfare of children. However, we do not believe that this will be possible in all circumstances and therefore do not accept this recommendation because of the potential risk to children. We will consider the committee's comments in finalising our proposals.

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

62. We are grateful to the committee for their consideration of this issue and will consider the committee's comments in formulating our detailed proposals for the consideration of exceptional cases, which will of course look to make the welfare of the child the paramount consideration.

63. We have considered the committee's recommendation that the Independent Review Mechanism (IRM) could be used to establish an appeals procedure. The IRM is a review process, conducted by an independent panel, which prospective adopters may use to review an adoption agency's determination where the agency is not minded to approve them. If requested by a prospective adopter, the IRM will review the case and make a fresh recommendation about the applicant's suitability to adopt to the agency that undertook the assessment. The agency's panel may also do this but the IRM provides an option that is entirely independent from the agency. The agency must take the IRM's recommendation into account when making its decision. However, the agency is not bound to agree with the recommendation. The IRM is not an appeals procedure as it is unable to make its own decision or overturn the agency's decision.

64. This part of the Bill is intended to help address improper practices taking place in another country outside of the control of the UK authorities rather than the adoption procedure in the UK. As the IRM is restricted to considering determinations made by adoption agencies in England and Wales, which do not come within this Bill, it does not have any of the necessary expertise regarding potential abuses of intercountry adoption or the situation in other countries. As these provisions are not expected to be used frequently or, given the relatively small number of intercountry adoption applications in the UK, to impact on large numbers of people, it is difficult to see how the IRM could be expected to acquire and retain the necessary expert knowledge that would be needed to undertake such a function.

65. We therefore do not accept this recommendation as the IRM would not be suited to taking on this additional function, which is fundamentally different to its intended purpose.

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

66. We have considered this issue carefully, and do not agree that it would be beneficial for the Government to establish such an agency. It is important to bear in mind that the UK has only around 300 applications a year for intercountry adoption, spread over a wide range of different countries, around 30 in 2004 and around 60 in the last five years.

67. Several of the countries which are involved in the highest numbers of these applications have well established government to government systems that do not require a specialist agency in order to operate satisfactorily. Of those countries that remain, many have only 1 or 2 applications per year from the UK, meaning that to set up a specialist agency to deal with these would be likely to involve a disproportionate cost.

68. Of course, there is nothing to prevent independent organisations from setting up an agency or agencies dedicated to intercountry adoption. Provision has also been made in the Adoption and Children Act 2002 for independent organisations who wish to provide support and information to intercountry adopters to register as adoption support agencies.

CHAPTER 8: RESOURCES

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

69. We firmly believe that the proposals in the Green Paper, and built on in the *Next Steps* paper published on 18 January 2005, taken as a whole, will provide support for parents and children that will help them avoid entering the court process, as well as supporting them within the process to reduce the number of lengthy, contested hearings and repeated applications.

70. However, for purely illustrative purposes, we will include in the RIA as published alongside the Bill an assessment of the cost to Government were caseload to rise.

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

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

71. CAFCASS is already adequately resourced, but we recognise that the Bill has resource implications for CAFCASS, and there will need to be a reduction in the number and length of reports commissioned from CAFCASS by the courts in order to allow it to focus more on its new problem solving roles.

72. The Department is, of course, in close contact with CAFCASS, as one of its sponsored Non-Departmental Public Bodies, about the level of resource it requires in order to fulfil its functions.

73. It is critical to recognise that there are resource issues associated with not taking action, as well as with the implementation of the Bill and the wider programme set out in *Parental Separation: Children's Needs and Parents' Responsibilities*. Our estimate is that, if current growth in contact applications of around 4-4.5% per year continues, the associated costs will have risen by around £27 million per year by 2007/08 compared to 2004/05.

74. The objective of the overall package of changes is to refocus the existing resources spent across Government on protracted disputes about arrangements for children. The Government recognises that some costs will be incurred before savings accrue, and will consider the potential costs and savings carefully before implementing any part of the programme, including the provisions of the Children (Contact) and Adoption Bill.

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

75. We appreciate the committee's consideration of the RIA, and its view that it represents a thorough assessment. We will take these points into account in developing the full RIA for publication alongside the Bill.

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

76. We believe that we had an adequate evidence base for the proposals we have developed, including quantitative data, as set out in the RIA, together with the perspectives of stakeholders as established through consultation. Work will continue to develop better sources of information and statistical data, but this is a longer term process, and we would be concerned not to delay the provision of powers the judiciary have advised are urgently needed for the length of time that might be required to substantially update statistical collection systems.

77. The University of Leeds has recently completed the second phase of Government sponsored research on Residence and Contact Disputes in Court. The first phase (published in 2003) examined a sample of court files and the second involved qualitative in-depth interviews with parents who had taken their case to court. These interviews explored why parents go to court, their expectations, their satisfaction with the outcomes and the effect of going to court on them and their children. The report on this second phase will be published shortly.

78. We are presently considering the appointment of an independent researcher to review the range of information that is currently available. In addition, we are looking at adding questions to the ONS omnibus survey to provide further information about issues around relationship breakdown and parental separation, as took place prior to publication of the *Parental Separation* Green Paper.

Printed in the UK for The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office
06/05 179543 308620 19585

Published by TSO (The Stationery Office) and available from:

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www.tso.co.uk/bookshop

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ISBN 0-10-165832-X

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