



POLICY BRIEFING

The Education Network

8 March 2004

09/04

Children Bill (2004)

Summary

The Children Bill (2004) provides a legislative framework for proposals previously outlined in the Green Paper *Every Child Matters*. This policy briefing describes the main features of the Bill, with reference to *Every Child Matters: The Next Steps* the Government's response to the Green Paper.

The information in this briefing, prepared jointly for TEN, LGIU and DHN, will be of interest in England and Wales. Measures in the Bill that apply to only one country, or where there are different approaches, are identified.

Copies of the full documents may be downloaded as follows:

Children Bill

www.publications.parliament.uk/pa/pabills.htm

Every Child Matters: The Next Steps

www.dfes.gov.uk/everychildmatters

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The information in this policy briefing applies to England and Wales

You are encouraged to circulate this policy briefing to anyone in your authority who may find it useful, including headteachers and school governors.

Introduction

The Green Paper *Every Child Matters* (see TEN briefing 33/03) [**LGIU PB 114/03/DHN 030/03**] takes an ambitious whole-systems approach to supporting children. It sets specialist services, including child protection, within an overall framework of universal support for children and young people. It seeks to improve outcomes for children by early intervention for families who require additional support. As a response to the report on the death of Victoria Climbié it also seeks to safeguard children by improving accountability and encouraging partnership working.

Some of the measures identified in the Green Paper require legislation, and this is provided through the Children Bill 2004, which was introduced in the House of Lords on 3 March. It is hoped that the second reading will take place before Easter, and the Government intends that it will pass into statute in November. The Department for Education and Skills have also issued *Every Child Matters: The Next Steps*, a response to the Green Paper which summarises the responses to the consultation, provides a context for the Bill, and identifies future plans.

Main Measures in the Bill

[The pronoun 'he' is used throughout, in accordance with legislative practice.]

A Children's Commissioner will be established

The Children's Commissioner is responsible for promoting the views and interests of children in the United Kingdom. He must involve and consult with children and have regard to the United Nations Convention on the Rights of the Child. The Commissioner will report to Parliament through the Secretary of State. He will not consider matters falling under the remit of existing UK Children's Commissioners (Wales, N.Ireland, Scotland) and must work closely with these Commissioners. The Commissioner will be in post by April 2005 with children involved in the process.

A new duty on agencies to co-operate to improve the well-being of children and young people

Children's services authorities (*ie.* those local authorities which currently provide social services and are education authorities) must promote co-operation within the authority and with partners who, in turn, are required to co-operate with the

authority to improve children's well-being. The concept of well-being covers physical and mental health, protection from harm and neglect, education and training, contribution to society and social and economic well-being. Partners can establish pooled funds to carry out this duty.

Partners specified in the Bill are:

England – police, probation, district councils where relevant, Strategic Health Authorities and PCTs, Connexions, and the Learning and Skills Council.

Wales – police, probation, Local Health Boards, NHS trusts, and the National Council for Education and Training in Wales.

The Next Steps points out that this duty provides the basis for integrated planning and commissioning through local partnerships. In light of the response to the consultation, the Bill 'deliberately steers clear of specifying a name or organisational title for these arrangements, to give authorities maximum flexibility'. Children's Trusts will not be established as statutory organisations, but there is still a recommendation that most areas will have a partnership known as a Children's Trust by 2006 and all areas by 2008.

A duty to make arrangements to safeguard and promote the welfare of children

Partner agencies are required to discharge their functions with regard to the need to safeguard and promote the welfare of children. They must also ensure that any body providing services on their behalf must do the same. The purpose of this duty is so that agencies give appropriate priority to safeguarding children and share concerns at an early stage to encourage preventative action.

Partners are:

England – Children's services authorities, district councils, Strategic Health Authorities, PCTs, NHS trusts, police, probation, youth offending teams, governors of prisons or secure training centres, Connexions.

Wales – Children's services authorities, Local Health Boards, police, probation, youth offending teams, governors of prisons or secure training centres, youth support services.

NB: This excludes functions where section 175 of the Education Act 2002 applies – the duty on LEAs, schools and further education establishments to exercise their functions with a view to safeguarding and promoting the welfare

of children (currently the subject of consultation to bring existing guidance into line with the Green Paper and Bill – see TEN briefing 01/04). [LGIU PB 008/04].

A power to set up a new database with information about children

For the purposes of the sections above, the Secretary of State/Welsh Assembly may establish regulations to require children’s services authorities to set up local databases of information about children or may make regional or national arrangements. There may also be secondary legislation on matters such as security, access and management of information. The purpose is to facilitate information sharing where there are concerns about a child’s safety or well-being. *The Next Steps* indicates that decisions on these issues have yet to be made and will take into account feedback from Identification, Referral and Tracking Pilots. Authorities are urged ‘not to rush into decisions on IT investment at this stage’.

Local Safeguarding Children Boards (LSCBs)

Children’s services authorities must establish LSCBs to replace area child protection committees with statutory membership from ‘Board partners’. In **England** these are the partners identified above, plus the Children and Family Court Advisory and Support Service; in **Wales**, the partners identified above minus youth offending teams. There is a duty of co-operation between the children’s services authority and Board partners. The purpose of LSCBs is to co-ordinate the work of Board partners for the purpose of safeguarding and promoting the welfare of children and to ensure effectiveness. Two or more children’s services authorities may decide to form a joint LSCB. *The Next Steps* indicates that the Director of Children’s Services will chair the Board, unless a more independent chair is agreed locally. The Director will be accountable to the local authority which is ultimately responsible for safeguarding arrangements. Should a partner not fulfil their obligations to safeguard children, measures can be taken, from involving performance management bodies to involving the Secretary of State. Boards will be established by 2006.

A Director of Children’s Services (England)

Children’s services authorities in England must appoint a Director of Children’s Services to be accountable for all local authority children’s education and social services and any services for children provided on behalf of the NHS under section 31 of the Health Act 1999 (which provides for local authorities and the NHS to pool budgets, provide integrated services and lead commissioning of services). The Local Authority Social Services Act 1970 will be amended to

require Directors of Adult Social Services. The Children and Young Persons Act 1933 which requires a Chief Education Officer will also be amended.

The Next Steps indicates that the consultation identified concern about inflexibility and timescales in relation to this proposal. Therefore authorities will have 'flexibilities' such as deciding whether to add adult education, social service, housing, leisure or other services to the Children's Director's brief. A deputy Chief Executive, or Chief Executive could take on this role provided they were able to give it sufficient personal focus. The Government will monitor the results of inspections to identify which arrangements work most effectively and will decide when this should take legal effect, but there is an expectation that most areas will have the post by 2006 and all by 2008.

A lead council member for children's services (England)

Children's services authorities in England must designate a lead member for the arrangements covered by the post of Director of Children's Services. Guidance will indicate that the lead member should have a specific focus on child protection.

In **Wales**, children's services authorities must appoint a 'lead director for children and young people's services' to co-ordinate and oversee arrangements, and also a lead council member, while their partner organisations must also appoint lead individuals.

A framework for inspection and joint area reviews (England only)

An integrated Framework will be devised by the Chief Inspector of Schools in consultation with other bodies including the Commission for Social Care Inspection and the Commission for Healthcare Audit and Inspection. Inspecting bodies have a duty of co-operation for the purposes of inspections and reviews. Joint area reviews to evaluate the extent to which children's services improve the well-being of children in the area will take place.

New powers of intervention in failing authorities

Powers under the Education Act 1996 to secure proper performance of local education authorities' functions will be extended to cover children's social services functions. *The Next Steps* indicates that powers should be invoked 'only as absolutely necessary'.

A duty to promote the educational achievement of looked after children

Section 22 of the Children Act 1989 which requires authorities to safeguard children and promote their welfare will be amended to include a particular duty to promote the educational achievement of looked after children.

NB: The Bill also covers provision relating to the devolution of CAFCASS Cymru to the National Assembly for Wales, private fostering, child minding and day care, adoption review panels, grants in respect of children and families and Child Safety Orders.

Every Child Matters: Next Steps – some key issues

The report outlines the vision for children's services based on young people's priorities – health, safety, enjoyment and achievement, making a positive contribution and economic well-being. This includes supporting families, early intervention, a lead professional, and a common assessment framework to be produced by the Government by the end of 2004 following consultation in the spring.

The consultation highlighted the need for increased investment to manage transitions and implement measures such as preventative work, information sharing and extended schools. The report indicates that funding for 2006-08 will be examined in the 2004 Spending Review which is likely to be a tight round. Additional funding has already been announced in the safeguarding children grant and a further £20m has been set aside for a change management programme to appoint regional advisers, build capacity in local authorities and develop 'the next generation' of directors. The report indicates that resources can be employed more effectively by measures such as rationalising funding streams, streamlining planning arrangements – the development of a single Education Plan and abolishing the need for a separate Children's Services Plan – and cost-effectiveness through joint commissioning in Children's Trusts. The Government intends to commission a study to inform a market strategy which could include establishment of incentives for excellent authorities to set up trading companies.

To promote workforce reform, a UK Sector Skills Council for social care, children and young people will be created. The Teacher Training Agency will become the main delivery agency for the training and development of school support staff.

The report considers how the voluntary sector, health, schools and other partners can be engaged in the vision for partnership working. A consultation on voluntary/community sector involvement and funding will be carried out in April.

New guidance will be issued in autumn 2004, following the Spending Review 2004 and an assessment of funding streams and targets.

Comments

In previous comments on the Green Paper, we welcomed the comprehensive and integrated approach to supporting children and families. A number of the measures in the Children's Bill were identified as positive developments, including the lead role for local authorities, the importance of the role of local authority members, the statutory nature of safeguarding children's boards, and duties to promote children's welfare.

The role of Children's Commissioner was seen as a valuable way of improving children's rights, though significant reservations have been expressed over whether the proposal is sufficiently robust or independent (see Children's Rights Alliance for England website - www.crights.org.uk). There was also an expectation that the Commissioner would cover England rather than the UK and there is lack of clarity about the relationship with the devolved Commissioners.

Whilst strongly welcoming the flexibility provided in the creation of the Director of Children's Services post, the emphasis in *Next Steps* clearly suggests some form of merger of education and social services departments; authorities will need to be careful to avoid a focus on structures rather than improving outcomes. The span of responsibility across education and children's social services is considerable; historically their priorities have been different; and councils are of different sizes, different levels of performance and different stages of partnership. Finding the right local solution will not be quick or easy (see news below of a forthcoming TEN publication on this process).

The evolution of the model for Children's Trusts is also strongly welcomed (especially compared with early suggestions), but concern remains over arrangements for ensuring accountability and transparency for Trust decisions through its member organisations. Some reassurance is required about the mechanisms through which schools and GPs – which are not brought into

arrangements as statutory partners – will be required to co-operate with proposals arising from partnerships (Trusts).

The proposal to amend the Children Act 1989 so that the duty to safeguard and promote the welfare of looked after children to include in particular a duty to promote their educational achievement is also strongly welcome – but it is essential that a parallel duty is placed on schools if there is to be any confidence that it will bring about significant change in provision for this most vulnerable group.

On the matter of resources, in its consultations on the Green Paper the Government indicated that implementation must be cost-neutral. *The Next Steps* refers to a debate in the 2004 Spending Review but also indicates ways of streamlining funding. LGIU believes that in order for this vision for children to be implemented successfully it is essential that it is adequately funded in its initial stages.

In summary, the Bill provides an exciting opportunity to make improvements in safeguarding children and promoting their welfare with an increased emphasis on partnership working. However there are some outstanding concerns about its implementation, which should be raised in the debate that accompanies its progress through Parliament.

Details of forthcoming TEN pamphlets:

Future structures for children's services, to be published in association with the LGA, will be a basic introduction to the structural issues faced by authorities in response to the new Children Bill, in particular in relation to the director of children's services post. It looks at the options that are open to authorities, highlights some of the arguments for different approaches and identifies some of the issues and processes involved.

There will also be a simple TEN guide to children's social services, particularly for the benefit of those in education acquiring new responsibilities and/or with a need to become familiar with new procedures, practices and jargon.

Details of both publications will be posted on TEN's website later in March.

This briefing can be found on www.ten.info in Policy briefings and in the following advance search categories: **social inclusion and children and young people**

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