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RENEWING THE VALUE OF SOCIETY

FAMILY POLICY

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Published Papers

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House of ~~Commons~~ Lords HANSARD, 16 February 1984, columns 392 to 466: Orders of the Day – Matrimonial and Family Proceedings Bill [~~Lords~~]

Signed J. Gray Date 23/9/2014

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THE LAW COMMISSION
(Law Com. No. 157)

FAMILY LAW

ILLEGITIMACY
(Second Report)

Laid before Parliament by the Lord High Chancellor pursuant to section 3(2) of the Law Commissions Act 1965

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The Law Commission was set up by Section 1 of the Law Commissions Act 1965 for the purpose of promoting reform of the law.

The Law Commissioners are-

The Honourable Mr. Justice Beldam, Chairman
Mr. Trevor M. Aldridge
Mr. Brian J. Davenport, Q.C.
Professor Julian Farrand
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ILLEGITIMACY

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THE LAW COMMISSION

FAMILY LAW

ILLEGITIMACY

(Second Report)

To the Right Honourable the Lord Hailsham of St. Marylebone, C.H., Lord High Chancellor of Great Britain

Close up

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PART I

INTRODUCTION

1.1 In August 1962 we submitted our Report on Illegitimacy[1] to you as part of our family law programme.[2] Since then the Government has indicated its intention to implement that Report as soon as there is Parliamentary time available for the necessary legislation.[3] In 1984 the Scottish Law Commission published their Report on Illegitimacy[4] and Parliament has implemented that Report in the Law Reform (Parent and Child) (Scotland) Act 1986. The policy underlying the recommendations of each Report is identical: to the greatest extent possible, the legal position of a child born to unmarried parents should be the same as that of one born to married parents, but as between the parents themselves, the mother alone should have parental rights and duties although

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1 Law Com. No. 118.

2 Second Programme of Law Reform (1968) Law Com. No. 14, Item XIX: Family Law: "a comprehensive examination of family law ... with a view to its systematic reform and eventual codification."

3 See, for example, Hansard (H.C.) vol. 98, written answers, col. 396.

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4 Scot. Law Com. No. 82

the father should be able to acquire these by legal process.[5] However, the Scottish Act has approached the task of translating these principles into legislative form in an entirely different way from that of the draft Bill attached to our earlier Report (which we shall call "the Report Bill"). Having been asked to look at the matter again, we see significant advantages in the Scottish approach and we also consider that, so far as our different systems of law will allow, there should be consistency on such an important subject. Accordingly, we have concluded that the Bill should be recast in the form annexed to this Report. We have also taken the opportunity to propose a number of minor changes of detail, which we think would go further towards implementing the basic policy of eliminating discrimination.

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[5] Law Com. No. 118, para. 7.26; Scot. Law Com. No. 82, paras. 2.3 - 2.5.

PART II

THE NEW APPROACH

2.1 Despite the basic policy of our earlier Report, there will continue to be a few areas in which there are legal differences between people whose parents have married and those whose parents have not. Accordingly, it will still be necessary to ascribe some people to one category and some to the other. Hence the Legitimacy Act 1976,[1] which modified the common law on legitimacy and provides for legitimation by subsequent marriage, is to be retained, although the time could well come when the differences, as far as the children are concerned, are so small as to make this unnecessary. Should our Reports be implemented, as the Scottish Law Commission have observed, "it would be a matter for argument whether it was any longer justifiable to refer to a legal status of illegitimacy ... Whether minor differences in the rules applying to different classes of persons justify the ascription of a distinct status is a matter for commentators rather than legislators".[2] In any event, the important differences will not be between the children at all, but between their parents.

2.2 Hitherto, however, English law has generally used adjectives to describe the child rather than his parents. Hence, to avoid the connotations of unlawfulness and illegality which are implicit in the term "illegitimate" our

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[1] Which consolidated the Legitimacy Acts of 1926 and 1959.

[2] Scot. Law Com. No. 82, para. 9.3.

earlier Report recommended replacing it wherever possible with the term "non-marital" and, accordingly, "legitimate" with "marital".[3] That policy was followed in the Report Bill. The Scottish Law Commission took a rather different view. They argued that labels of any kind applied to the child are unnecessary, given that in future "it should .... rarely be necessary to discriminate", and also undesirable, because they would "tacitly take on old connotations".[4] Instead, they recommended that "future legislation distinguish, where distinctions based on marriage are necessary, between fathers rather than between children" and that "where it is thought necessary to distinguish between people on the basis of whether or not their parents were married to each other at any relevant time ... this should be done expressly in those terms".[5] Parliament has now endorsed that approach in the Law Reform (Parent and Child) (Scotland) Act 1986.

2.3 Having considered these arguments, we are convinced that the Scottish approach is the better means of carrying the policy of non-discrimination into legislative form. We also think that it would be most unfortunate if the Statute Book were to contain two Acts on the same subject which differed so substantially. Nevertheless, because of the way in which the existing English legislation is cast, it has inevitably been a major task to recast the draft Bill in accordance with the

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3 Law Com. No. 118, para. 4.51.

4 Scot. Law Com. No. 82, para. 9.2.

5 Ibid.

... therefore, not necessary to reproduce Clause 2 of the Report Bill

Scottish approach. The draft Bill annexed to this Report[6] is (with a few changes which we shall explain shortly) to exactly the same effect as the Report Bill but looks very different. So that readers can easily trace their way back into the Report Bill and, more importantly, into the recommendations in our earlier Report we have included a table of derivations.[7]

2.4 One important feature of the new draft Bill is clause 1: this lays down a new rule of construction that references to relationships (for example, between parent and child or brother and sister or uncle and nephew) are to be construed, unless a contrary intention appears, without regard to whether or not any person's mother and father were married to each other at any particular time. This rule is applied to all future enactments and instruments.[8] In other clauses it is specifically adopted in respect of existing enactments relating to the allocation of parental rights and duties,[9] succession on intestacy[10] and dispositions of property.[11] It will thus be quite clear that, for example, in any proceedings relating to a child's custody or upbringing, the guiding consideration is the welfare of the child rather than the claims of either parent.[12] This approach enables the draft Bill to achieve the legislative changes needed to implement the basic policy without using adjectives which describe the child. In addition, however, clause 1 lays down an important rule for the future: henceforth, it will be unnecessary to use such adjectives in order to encompass the children of unmarried parents or those claiming through them

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[6] Appendix A.

[7] Appendix B.

[8] Clause 1(1).

[9] Clause 2.

[10] Clause 18.

[11] Clause 19.

[12] It is, therefore, not necessary to reproduce Clause 2 of the Report Bill

as such people will be covered unless a contrary intention is shown. Where it is desired to limit a provision to particular types of relationship it will be necessary to do so expressly.

2.5 Where such distinctions are thought necessary, whether now or in the future, the Bill also contains a provision designed to make them easier to draw without the use of labels attached to the child. The Scottish Law Commission recommended that such distinctions should be expressly in terms of whether or not a person's parents were married to each other. Owing to the complexity of the English law of legitimacy and legitimation, however, it is necessary to provide a little more detail. This is done by clause 1(2), which defines references to a person's parents being or not being married at the time of his birth in the same terms as "marital" and "non-marital" were defined in the Report Bill,[13] and by clause 1(3), which expands such references to the time of birth to include any time from conception to birth.

2.6 We also consider that it would be desirable to apply the new rule of construction to those existing enactments in which it is at present expressly provided that illegitimate relationships should be treated in the same way as legitimate. This would enable the term "illegitimate" to be removed from much of the statute book and we attach some importance to this. The detailed task of making the appropriate amendments to ensure that the effect of each of these widely differing

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[13] Clause 37 of the Report Bill.

provisions[14] remains unchanged is one which we think suitable for delegated legislation. Clause 30 of the new Bill therefore confers an order-making power upon the Lord Chancellor for this purpose; alternatively, however, a long list of appropriate amendments could be scheduled to the Bill in due course.

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[14] For example, section 113(2)(d) of the Housing Act 1985 and section 19(2)(b) of the Registered Homes Act 1984: "an illegitimate [child] [person] shall be treated as the legitimate child of his mother and reputed father."

PART III

MINOR POLICY CHANGES

Parental Rights and Duties of the Father (Clause 4)

3.1 At present, an unmarried father may be granted legal custody of his child, but he cannot share that custody with the mother.[1] The Report Bill provided that a court could grant him the full legal status of parenthood, that is all the parental rights and duties, usually sharing these with the mother in the same way that married parents do.[2] It was thought that such an order would normally be sought where the mother and father were living together and both wanted it, or where the mother had died without appointing the father testamentary guardian (although in that case he may at present apply to be made guardian), or where the parents had separated and he wanted full parental status rather than simply legal custody.[3] However, in providing that the father should share that status with the mother "unless otherwise directed," the Report Bill incidentally gave the court the unprecedented power to remove all the mother's parental authority. We think that this result was unintentional and could be undesirable. The Report Bill also allowed the court to confer on the father any one or more of the elements of parental authority. We also consider that this would be undesirable, particularly in conjunction with the power to remove that element of parental authority from the mother. This would be to invite the

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[1] Sections 9(1) and 11A(1) of the Guardianship of Minors Act 1971.

[2] Clause 4 of the Report Bill.

[3] Law Com. No. 118, para. 7.29.

mischief, now judicially frowned upon,[4] of the so-called "split order" under which one party has the burden of actually caring for the child, while the other is entitled to dictate upon such matters as education, religion, major medical treatment or the like.

3.2 The new clause 4 avoids these difficulties by permitting the court to order that the father shall have all parental authority, sharing it with the mother. Such an order will place him in essentially the same position as a married father. Once the father has acquired full parental status in this way, disputes between the parents will usually be dealt with in the same way as disputes between married parents, either by orders under the Guardianship Act 1973 relating to single issues[5] or by custody and access orders under the Guardianship of Minors Act 1971. If it is necessary to provide for either parent to retain particular rights and duties apart from actual custody after they have separated, this can be done by a combination of orders under sections 5 and 11A(1) of the 1971 Act. We do not think it right to make provision for the father to apply for authority over individual matters of upbringing where he has not shouldered the whole legal responsibility for the child in the same way that a married father does.

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[4] Dipper v. Dipper [1981] Fam. 31, 45 per Ormrod L.J. and Caffell v. Caffell [1984] F.L.R. 169, 171 per Ormrod L.J.

[5] Section 1(3).

3.3 There is one respect in which the position of a father who has been granted all the parental rights and duties by means of an order under clause 4 of the draft Bill will differ from that of a married father, in that the court will have power to revoke the order.[6] This was provided for in our earlier Report and, in the present state of the law relating to family responsibilities, we consider that it should be retained. We recognise that, owing to the widely varying extent to which unmarried fathers in fact assume responsibility towards their children (and indeed towards the mothers who bring those children up), it would not be in the best interests of the children if fathers were automatically to enjoy full parental status.[7] Where the parents are in fact living together and co-operating in bringing up their children, we hope that such orders will frequently be applied for and granted. However, unless the courts are able to remove parental powers where it subsequently proves not to be in the child's best interests for the father to have them, the courts may be reluctant to make such orders at all. A court will necessarily have to have regard to the extent to which it will be able to protect the child's interests should the need arise in the future and under the present law the powers of the divorce courts in relation to married couples[8] are somewhat more extensive than those under the Guardianship of Minors Acts. The time may come when the general framework of the law relating to the responsibilities of parents, not only towards their children but also towards one another, is such that this can be reconsidered; but for the time being we consider that the power to revoke these orders, in what we hope will be exceptional circumstances, should be available.

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6 Clause 4(3); see clause 4 of the Report Bill and new s.8(4) of the 1971 Act.

7 See Law Com. No. 118, paras. 4.25-4.26.

8 Matrimonial Causes Act 1973, s.42; see also Working Paper No.96, Review of Child Law: Custody (1986), especially Part II, for full discussion.

Agreement to Adoption etc. (Clauses 5, 6 and 7)

3.4 The Report Bill provided that the father's agreement to the child's adoption or freeing for adoption would be required, not only where he had full parental status or, as at present, custody by court order but also where he had a right of access only.[9] Furthermore, before freeing the child for adoption, a court would have to be satisfied that the father did not intend to apply for any of these orders or that if he did so apply the application would be likely to be refused.[10] Our earlier Report recognised that the arguments for and against including a mere right of access were finely balanced. On the one hand, "such an order clearly suggests that the court believed that a link between father and child should be recognised and fostered".[11] On the other hand, a father with access can be heard on the merits of the adoption order in any event.[12] A court which considers that it is in the best interests of the child for the father to continue to have the right of access can always refuse the order, whereas if his agreement is required that agreement may only be dispensed with in defined and limited circumstances in which the interests of the child are not the first and paramount

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[9] Clause 17(1) of the Report Bill.

[10] Clause 17(2) of the Report Bill.

[11] Law Com. No. 118, para. 9.11.

[12] Adoption Rules 1984 (S.I. 1984 No. 265) rr.4(2), 9, 10, 15(2), 21 and 23; Magistrates' Courts (Adoption) Rules 1984 (S.I. 1984 No. 611), rr. 4(2), 9, 10,15(2), 21 and 23.

consideration.[13] We now consider that a right to access, which may be very limited and may or may not be being exercised, is too flimsy a basis on which to give the father rights which may not be in the best interests of the child. This argument applies with even more force where the court is contemplating freeing the child for adoption before the father has made any application to the court at all.

3.5 On the other hand, the Report Bill would only have given such rights to a father whose parental authority stemmed from an order under what is now clause 4 of the new draft Bill or under the Guardianship of Minors Act 1971. However, it is possible for the father to be granted custodial rights under other legislation, for example in divorce proceedings between the mother and her spouse.[14] We consider that all fathers who have a right to custody, legal or actual custody, or care and control under any court order should be in the same position and clause 7 of the new draft Bill provides for this.

3.6 The same reasoning applies to the other additional powers which are acquired by a father with custodial rights. Thus, a father who has a right to custody, legal or actual custody or care and control under a court order, as well as a father who has full parental status by virtue of an order under clause 4 of the new Bill, will (i) be able to apply to the court under section 1(3) of the Guardianship Act 1973 to

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[13] Children Act 1975, s.12(2); see also Re W. (An Infant) [1971] A.C. 682.

[14] Matrimonial Causes Act 1973, s.42.

resolve any disagreement with the mother;[15] (ii) become guardian upon the death of the mother under section 3 of the Guardianship of Minors Act 1971; and (iii) have power to appoint a testamentary guardian to act after his own death under section 4 of the 1971 Act.[16] Provisions to this effect are now contained in clauses 5 and 6 of the new Bill.

Heirs (Clause 19)

3.7 The basic policy of both this and our earlier Report means that, unless the contrary intention appears, birth outside marriage should be irrelevant in tracing relationships for the purposes of all dispositions of property. Our earlier Report concluded that this should apply where the word "heir" is used as one of limitation in creating an entail;[17] however, where the word is used as a word of purchase (as for example, in "£4,000 to my heir") it should be an open question for the court to decide whether it does or does not include

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15 At present there is no such machinery apart from wardship.

16 A father acquires these rights under the present law if he has legal custody at the time of death: Guardianship of Minors Act 1971, s.14(3).

17 Law Com. No. 118, paras. 8.23 - 8.25.

Spacing

people claiming through such a link.[18] Since then, it has been represented to us that it is inconsistent to have a rebuttable presumption of inclusion for entails, while leaving the matter simply as one of construction where the word "heir" is otherwise used. Of course, the word may be used in such a way that no reference to any relationship is intended (as, for example, in "John Smith shall be my heir"). However, where the term clearly does denote or imply a relationship we now think that it should be construed in accordance with the general principle and clause 19(2) achieves that result.

Protection of Trustees and Personal Representatives

(Clause 20)

3.8 The basic policy, that birth outside marriage should be irrelevant, applies both to intestate succession and to the construction of dispositions of property unless a contrary intention appeared. This extends the categories of people who may be able to claim through an "illegitimate link".[19] Our earlier Report recommended a corresponding extension of the protection now given to trustees and personal representatives by section 17 of the Family Law Reform Act 1969, so that they might convey and distribute property without having ascertained that there is no relative who might have a claim by virtue of an "illegitimate link" and would be under "no liability to any such person of whose claim they did not have

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[18] Law Com. No. 118, paras. 8.19 - 8.22.

[19] Law Com. No.118, paras. 8.7-8.25.

notice at the time of the conveyance or distribution".[20] The continued discrimination involved in that recommendation is clearly contrary to the basic policy of the Report and we have therefore re-considered it. The original reasoning was that the protection "is necessary to avoid the onerous burden that might otherwise be placed on personal representatives to make difficult (and embarrassing) enquiries....".[21] On reconsideration, however, we see several persuasive arguments against accepting this reasoning as conclusive.

3.9 In the first place, it may be no more onerous to ascertain whether there is anyone entitled through an "illegitimate link" than it is to ascertain other matters under the general duty to distribute the estate to the right beneficiaries. For example, where a deceased lived or travelled extensively abroad in the course of his life it may be difficult to establish that he did not somewhere contract a valid marriage of which there are issue who are entitled to share in his estate. There may also be doubt about whether the property should be distributed under an intestacy or whether there is an undiscovered will, or, if there is a will, whether it has been overtaken by a later one.

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[20] Law Com. No. 118, para. 6.29. See also House of Commons Standing Committee B, 29 April 1969, Col. 136.

[21] Law Com. No. 118, para. 6.29. The Report of The Committee on The Law of Succession in Relation to Illegitimate Persons (1966), Cmnd. 3501 had considered special protection to be necessary.

3.10 In the second place, we consider that the existing protection for personal representatives and trustees, if it is sufficient to cover other difficulties arising in distributing the estate, is also sufficient for this purpose. The principal protection is section 27 of the Trustee Act 1925, under which a trustee or personal representative may advertise for claims; he is then exempt from liability to all claimants except those of whose claim he has notice.[22] This was originally thought to be insufficient because "not all personal representatives do advertise (particularly since the expense may, in the case of small estates, be disproportionately heavy)".[23] However, if this point is valid at all, it is equally valid in respect of the many other difficulties and uncertainties against which advertising can provide protection and in respect of which there is no equivalent to section 17 of the 1969 Act. We understand that advertising in the London Gazette and in a local newspaper currently costs about £80. In the case of estates which are small, the liability of the personal representative would be correspondingly small and it should be for the representative to judge, in this as in other matters, whether the expenditure is disproportionate to the risk. We understand that professional personal representatives, such as solicitors and banks, almost invariably advertise, thus making any further protection unnecessary. We also understand that when consulted solicitors generally advise personal representatives to do likewise unless the sum is very small or the personal representative is the sole beneficiary. Repealing section 17 would not affect that situation. It must be that some

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22 It is not clear whether notice here means actual or constructive notice.

23 Law Com. No. 118, para. 6.29, n.69.

unqualified or non-professional personal representatives do not advertise at present and might be affected by a repeal of the section. However, they are also at risk in other respects by failing to advertise and we no longer see any sufficient justification for singling out these particular claims as requiring special measures. The court also has power to relieve a personal representative of liability where he has "acted honestly and reasonably, and ought fairly to be excused ...";[24] although the relief is discretionary it appears that it has been more readily granted to those acting without payment than it is to professional trustees.[25]

3.11 It is important to remember that the advertisements concerned are simply for claims generally and thus carry no implication which might be regarded as embarrassing. In any event, embarrassment may well be thought an insufficient reason for the discrimination involved in the present protection. Where there is some reason to suspect that there might be an "illegitimate link" a conscientious personal representative or trustee would normally make enquiries, however embarrassing, if only to be sure that he will not be exposing the other beneficiaries to a later action against them. Moreover, to compromise the prospects of a person realising his rights through an "illegitimate link" in order to save embarrassment might seem to mark and encourage the

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[24] Trustee Act 1925, s.61.

[25] See, for example, National Trustee Co. of Australasia v. General Finance Co. of Australasia [1905] A.C. 373; Re Waterman's Will Trusts [1952] 2 All ER. 1054 and Re Pauling's Settlement Trusts [1964] Ch.303.

very sense of stigma that the Bill is otherwise seeking to remove.

3.12 Finally, it may not be in the interests of the other beneficiaries that the personal representative's duty to distribute the estate to the right beneficiaries should remain qualified in this way. A person claiming through an "illegitimate link" will still be entitled to trace the assets into their hands, and they might have understandable reason to complain if reasonable enquiries before distribution would have disclosed his existence.

3.13 Accordingly we now conclude that there is no adequate justification for perpetuating this particular form of discrimination and recommend that section 17 of the 1969 Act be repealed. Clause 20 of the new Bill so provides.

Determination of Relationships (Clauses 22 and 23)

3.14 Our earlier Report and Bill made provision for any person to apply for a declaration of his parentage.[26] Subsequently, we published our Report on Declarations in Family Matters,[27] designed to modernise the law relating to the existing declarations of marital status, legitimacy or legitimation. That Report is shortly to be implemented by Part III of the Family Law Bill 1986. Should our Report on Illegitimacy also be implemented, such need as there is for separate declarations of legitimacy and legitimation will be

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[26] Law Com. No. 116, paras. 10.13 - 10.14; and clause 27.

[27] Law. Com. No. 132 (1984).

yet further reduced.[28] In most cases, a declaration of parentage coupled with a declaration (where necessary) that those parents were married to one another at a relevant time, will be sufficient.[29] However, it may be necessary to retain these special declarations to meet some very exceptional cases.[30] If such declarations are to remain, we think that all should be subject to the same rules, for example as to jurisdiction[31] and effect.[32] Furthermore, it would not be right that those children of unmarried parents who are obliged to seek a declaration of parentage should be subject to a more limited or onerous regime[33] than those who are able to apply for declarations of legitimacy or legitimation when the essential issue is the same. Hence we recommend that declarations of parentage be assimilated to and integrated with the scheme for declarations of legitimacy and

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[28] In 1984 only 156 declarations were made under section 45 of the Matrimonial Causes Act 1973 (Judicial Statistics Annual Report 1984 (1985) Cmnd. 9599, Table 4.9) and in 1985 only 39 declarations were made (figures supplied by the Lord Chancellor's Department Statistics Branch). These figures relate to all the declarations available under section 45: thus the actual numbers of declarations of legitimacy or legitimation may be even smaller (these figures are not available).

[29] See, for example, The Ampthill Peerage [1977] A.C. 547 and Veasey v. Veasey (1981) 11 Fam. Law 249.

[30] For example, in cases where the status of legitimacy (or otherwise) under some foreign law is relevant, as in the Canadian case Re MacDonald (1964) 44 D.L.R. (2d.) 208.

[31] C.f. Law Com. No. 118, para. 10.21 and Law Com. No. 132, para. 3.49.

[32] C.f. Law Com. No. 118, paras. 10.37-10.39 and Law Com No. 132, para. 3.42

[33] Law Com. No. 118, paras. 10.6-10.27.

legitimation which is about to be enacted[34] and clause 22 of the new Bill so provides.

3.15 Our earlier Report and Bill also provided for the extension of the court's power to direct the use of blood tests in applications for a declaration of parentage, so that these might be used to ascertain whether a particular person is or is not the father or mother of the applicant.[35] Such powers would clearly be an improvement on the present provision in section 20 of the Family Law Reform Act 1969, under which blood tests may only be directed to show whether or not a party is excluded from being the father. Accordingly, we now recommend that they be extended to all three declarations and indeed to any other civil proceedings in which the parentage of any person falls to be determined. Clause 23 of the new Bill provides for this by amendment to the 1969 Act.

3.16 That clause does not, however, include the proposal in our earlier Report that the court in proceedings for a declaration of parentage should have power to dismiss an application if any person named in a blood test direction fails to take a step required for the purpose.[36] That power would have been in addition to the court's existing powers to draw such inferences as seem proper from a refusal by a person

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[34] Family Law Bill 1986, clause 56.

[35] Law Com. No. 118, paras. 10.28-10.31.

[36] Law Com. No. 118, para. 10.31 and clause 29(4) of the Report Bill.

to comply with a blood test direction[37] and to dismiss an application by a person who relies on the presumption of legitimacy if he fails so to comply.[38] Furthermore, in proceedings for a declaration of parentage, legitimacy or legitimation, it will be expressly required that the truth of the proposition to be declared be proved to the satisfaction of the court.[39] In assimilating the 1986 Bill and the Report's recommendations we have had to reconsider the matter. We now consider that there can be no risk that a court which is not so satisfied will feel obliged to grant a declaration of parentage, merely because such evidence as there is points to a particular person being the parent but a blood test has been refused (presumably because it is to the advantage of both that the applicant be shown to be the child of the alleged father). Accordingly, there seems no good reason in this, as in any other case, to single out declarations of parentage for special and more restrictive rules.

Proof of Paternity

3.17 The Report Bill contains a number of other provisions which require that, where paternity is relevant, it must be

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37 Family Law Reform Act 1969, s.23(1).

38 Family Law Reform Act 1969, s.23(2).

39 Family Law Bill 1986, clause 58.

proved to the satisfaction of the court.[40] The reasons given in the Report for such a provision relate to declarations of parentage,[41] where there may indeed be concern about collusive actions in which the only evidence points to a particular person as the parent but where the court considers this insufficient to justify a declaration. It is, as we have already seen, the general rule in such proceedings that matters be proved to the courts' satisfaction and we remain of the view that it should be so. Similar requirements occur elsewhere in the law where the matters in question may not be disputed but should be clearly demonstrated in order to justify the relief claimed.[42] However, we doubt whether it is necessary to make special provision for any other case.

3.18 It is not entirely clear what the effect of such a provision will be upon the standard of proof, but if there is an invariable and significant difference between the usual standard of proof upon the balance of probabilities and proof to the satisfaction of the court, the results could be unacceptable. Since 1969 the standard of proof used in rebutting the presumption of legitimacy is the balance of

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[40] Clauses 11, 14(4), 21(b), 22(2) and 23(2) of the Report Bill.

[41] Law Com. No. 118, paras. 10.10, 10.12 and 10.22

[42] See, for example, Matrimonial Causes Act 1973, s.1(g) and (4), relating to divorce.

probabilities.[43] It cannot be right that, as a matter of law, the standard of proof required to show that a particular man is not the father is necessarily less than the standard of proof required to show that he is. As a matter of evidence, it may be easier to show the one than the other, although with the advent of modern blood testing it is often possible to prove a likelihood of paternity to a degree of probability far higher than is possible for many other facts which may be in issue in litigation. The courts will also bear in mind, in appropriate cases, the general principle that the degree of proof should be commensurate with the gravity of the subject matter in dispute.

3.19 We therefore think that it would be unsatisfactory if some special standard of proof were automatically to prevent a child being granted access to or financial support from a man who, after fully fought proceedings, was shown on a balance of probabilities to be the father. Such a special provision might be seen as unnecessarily marking out the issue of paternity amongst the many issues faced by the courts in civil proceedings and as such contrary to the general principle of eliminating unnecessary discrimination in the law. Accordingly, except in relation to declarations, the new Bill does not include express requirements that paternity should be established to the court's satisfaction.

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[43] Family Law Reform Act 1969, s.26.

Artificial Insemination (Clause 27)

3.20 Our earlier Report recommended that a child conceived through artificial insemination from a donor other than the mother's husband should be treated as the husband's child unless he did not consent to the insemination.[44] Provision for this is repeated in clause 27 of the new Bill. Since then, the Committee of Enquiry into Human Fertilization and Embryology has published its Report. That Report endorsed our earlier proposals in principle, but recommended that a similar approach be adopted in relation to ovum donation and embryo transfer.[45] It may therefore be desirable to have a comprehensive scheme dealing with all these techniques, which raise similar difficulties in defining parenthood. To avoid piecemeal measures which may later have to be reconsidered, we can see some advantage in deferring legislation on this subject until a comprehensive scheme can be achieved. We consider, however, the pace of these developments is such that this should not be long delayed.

Insert signatures as an attached

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[44] Law Com. No. 118, paras. 12.9, 12.11 and 12.26 and clause 34 of the Report Bill.

[45] (1984) Cmnd. 9314, recommendations 50-54, paras. 4.17, 4.22, 4.24, 4.25 and 6.8

Close up spacing between lines

(Signed) ROY BELHAM, Chairman
TREVOR M. ALDRIDGE
BRIAN DAVENPORT
JULIAN FARRAND
BRENDA HOGGETT

JOHN GASSON, Secretary
8 September 1986

APPENDIX B —— (Bold)

TABLE OF DERIVATIONS —— (Bold)

Draft Bill Clause	Report Bill Clause	Report Paragraph
1 (1)	—	—
(2)	37	—
(3)	"	—
2 (1) (a)	22 (1)	14.20
(b)	13	14.22
(c)	2 and Sched. 2, para 29	14.23
(d)	12	14.27 + 14.34
(e)	14	14.13
(f)	20 (5)	14.20 + 14.35
(g)	23 (1)	14.20
(2)	Sched 2, para. 41 (6)	—
3	12 (1)	14.34
4	4	14.24 - 14.26
5	12 (2)	14.27
6	3	14.30 - 14.33
7	17	9.2 - 9.14
8 (1)	19	14.36
(2) - (5)	20 (1) - (4)	14.35
9	18 + Sched. 1	14.48
10	5 (in part)	14.28
11	6 + 7 (in part)	—
12	5 (in part)	14.4, 14.5, 14.7, 14.8 14.12 + 14.14
13	6 + 7 (in part)	14.4, 14.5, 14.7, 14.8 + 14.14
14	8	14.15
15	15	14.18

Draft Bill Clause	Report Bill Clause	Report Paragraph
16	16	6.45 - 6.46
17	1	14.4
18	24	14.37 - 14.45
19	25	8.15 - 8.25
20	-	-
21	26	14.45
22	27 & 28	14.52 - 14.61
23	29	14.58
24	31	14.69, 14.71 & 14.74
25	32	14.69 - 14.71
26	33	14.71
27	34	14.78 - 14.82
28	35	14.67
29	36	14.62
30	-	-
31	-	-
32	39	-
33	38 & 40	-
34	41 & 42	-

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M. H. COLLON

RESTRICTED

FAMILY LAW REFORM BILL

ARRANGEMENT OF CLAUSES

PART I

GENERAL PRINCIPLE

PART II

RIGHTS AND DUTIES OF PARENTS ETC.

RESTRICTED

DRAFT

OF A

B I L L

TO

Reform the law relating to the consequences of birth outside marriage; to make further provision with respect to the rights and duties of parents and the determination of parentage; and for connected purposes. A.D. 1986.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

GENERAL PRINCIPLE

Parents not being married to have no effect in law on relationships.

1.—(1) In this Act and enactments passed and instruments made after the coming into force of this section, references (however expressed) to any relationship between two persons shall, unless the contrary intention appears, be construed without regard to whether or not the father and mother of either of them, or the father and mother of any person through whom the relationship is deduced, have or had been married to each other at any time.

(2) In this Act and enactments passed after the coming into force of this section, unless the contrary intention appears, references to a person whose father and mother were married to each other at the time of his birth include, and references to a person whose father and mother were not married to each other at the time of his birth do not include, references to a person who—

(a) is treated as legitimate by virtue of section 1 of the Legitimacy Act 1976; 1976 c.31.

(b) is a legitimated person within the meaning of section 10 of that Act;

(c) is an adopted child within the meaning of Part IV of the Adoption Act 1976; 1976 c.36.

(d) is otherwise treated in law as legitimate,

and cognate references shall be construed accordingly.

(3) For the purpose of construing references falling within subsection (2) above, the time of a person's birth shall be

Part I

taken to include any time during the period ending with his birth and beginning with the act of intercourse resulting in his birth or, where there was no such act, his conception.

PART II

RIGHTS AND DUTIES OF PARENTS ETC.

Parental rights and duties: general

Construction of enactments relating to parental rights and duties.

2.—(1) In the following enactments, namely—

(a) section 42(1) of the National Assistance Act 1948;

1948 c.29.
1969 c.46.

(b) section 6 of the Family Law Reform Act 1969;

1971 c.3.

(c) the Guardianship of Minors Act 1971 (in this Act referred to as "the 1971 Act");

1973 c.29.

(d) the Guardianship Act 1973 (in this Act referred to Part I of as "the 1973 Act");

1975 c.72.

(e) Part II of the Children Act 1975;

1980 c.5.

(f) the Child Care Act 1980 except Part I and sections 13, 24, 64 and 65;

1986 c.50.

(g) section 26(3) of the Social Security Act 1986,

references (however expressed) to any relationship between two persons shall, unless the contrary intention appears, be construed in accordance with section 1 above.

(2) In subsection (7) of section 1 of the 1973 Act (equality of parental rights) for the words from "or be taken" onwards there shall be substituted the words "and nothing in subsection (1) above shall be taken as applying in relation to a child whose father and mother were not married to each other at the time of his birth".

Agreements as to exercise of parental rights and duties.

3. For subsection (2) of section 1 of the 1973 Act (agreements between parents to give up parental rights) there shall be substituted the following subsection—

"(2) Notwithstanding anything in section 85(2) of the Children Act 1975, an agreement may be made between the father and mother of a child as to the exercise by either of them, during any period when they are not living with each other in the same household, of any of the parental rights and duties with respect to the child; but no such agreement shall be enforced by any court if the court is of opinion that it will not be for the benefit of the child to give effect to it."

Parental rights and duties where parents not married

Parental rights and duties of father.

4.—(1) Where the father and mother of a child were not married to each other at the time of his birth, the court may, on the application of the father, order that he shall have all parental rights and duties with respect to the child.

(2) Where the father of a child is given all the parental rights and duties by an order under this section, he shall, subject to any order made by the court otherwise than under this section, have those rights and duties jointly with the mother of the child or, if the mother is dead, jointly with any guardian of the child appointed under the 1971 Act.

(3) An order under this section may be discharged by a subsequent order made on the application of the father or mother of the child or, if the mother is dead, any guardian of the child appointed under the 1971 Act.

(4) This section and the 1971 Act shall be construed as if this section were contained in that Act.

Exercise of parental rights and duties.

5. At the beginning of subsection (3) of section 1 of the 1973 Act (which enables application to be made for the direction of the court where parents disagree on a question affecting the child's welfare) there shall be inserted the words "Subject to subsection (3A) below" and after that subsection there shall be inserted the following subsection—

"(3A) Where a child's father and mother were not married to each other at the time of his birth, subsection (3) above does not apply unless—

(a) an order is in force under section 4 of the Family Law Reform Act 1987 giving the father all the parental rights and duties with respect to the child; or

(b) the father has a right to custody, legal or actual cutosy or care and control of the child by virtue of an order made under any other enactment."

Appointment of guardians.

6.—(1) At the end of section 3 of the 1971 Act (rights of surviving parent as to guardianship) there shall be added the following subsections—

"(3) Where the father and mother of a child were not married to each other at the time of his birth, this section does not apply unless the father satisfies the conditions of subsection (4) of this section.

(4) The father of a child satisfies the conditions of this subsection if—

(b) an order is in force under section 4 of the Family Law Reform Act 1987 giving him all the parental rights and duties with respect to the child; or

(a) he has a right to custody, legal or actual custody or care and control of the child by virtue of an order

Part I

made under any other enactment."

(2) At the end of section 4 of that Act (power of father and mother to appoint testamentary guardians) there shall be added the following subsection-

"(7) Where the father and mother of a child were not married to each other at the time of his birth-

(a) subsection (1) of this section does not apply, and subsection (3) of this section does not apply in relation to a guardian appointed by the mother, unless the father satisfies the conditions of section 3(4) of this Act; and

(b) any appointment under subsection (1) of this section shall be of no effect unless the father satisfies those conditions immediately before his death."

(3) At the end of section 5 of that Act (power of court to appoint guardian for child having no parent etc.) there shall be added the following subsection-

"(3) Where the father and mother of a child were not married to each other at the time of his birth, subsection (1) of this section shall have effect as if for the words 'no parent' there were substituted the words 'no mother, no father satisfying the conditions of section 3(4) of this Act'.

Rights with respect to adoption. 1976 c.36.

7.—(1) In section 18 of the Adoption Act 1976 (which relates to orders declaring a child free for adoption), for subsection (7) there shall be substituted the following subsection-

"(7) Before making an order under this section in the case of a child whose father and mother were not married to each other at the time of his birth and whose father is not his guardian, the court shall satisfy itself in relation to any person claiming to be the father that either-

(a) he has no intention of making-

(i) an application under section 4 of the Family Law Reform Act 1987 for an order giving him all the parental rights and duties with respect to the child; or

(ii) an application under any enactment for an order giving him a right to custody, legal or actual custody or care and control of the

child; or

(b) if he did make such an application, the application would be likely to be refused."

(2) In section 72(1) of that Act (interpretation), in the definition of "guardian" for paragraph (b) there shall be substituted the following paragraph-

"(b) in the case of a child whose father and mother were not married to each other at the time of his birth, includes the father where-

(i) an order is in force under section 4 of the Family Law Reform Act 1987 giving him all the parental rights and duties with respect to the child; or

(ii) he has a right to custody, legal or actual custody or care and control of the child by virtue of an order made under any enactment.

Rights where child in care etc. 1969 c.54.

8.—(1) In section 70 of the Children and Young Persons Act 1969 (interpretation), after subsection (1) there shall be inserted the following subsection-

"(1A) Where, in the case of a child whose father and mother were not married to each other at the time of his birth, an order of any court is in force giving the right to the actual custody of the child to the father, any reference in this Act to the parent of the child includes, unless the contrary intention appears, a reference to the father".

1980 c.5.

(2) After subsection (1) of section 87 of the Child Care Act 1980 (interpretation), there shall be inserted the following subsection-

"(1A) Where, in the case of a child whose father and mother were not married to each other at the time of his birth, an order is in force under section 4 of the Family Law Reform Act 1987 by virtue of which actual custody of the child is shared between the mother and the father, both the mother and the father shall be treated as parents of the child for the purposes of Part I and sections 13, 24, 64 and 65 of this Act."

Consents to marriages. 1949 c.76.

9. In Schedule 2 to the Marriage Act 1949 (consents required to marriages of persons under 18), for Part II there shall be substituted the following provisions-

"II. WHERE THE PARENTS OF THE CHILD WERE NOT MARRIED TO EACH OTHER AT THE TIME OF HIS BIRTH—

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Circumstances	Person or persons whose consent is required
1. Where both parents are alive:	
(a) if the father has been given by an order of any court the right to the actual custody of the child or the right to consent to the marriage of the child, or both those rights;	The mother and the father.
(b) if the father has not been given either of those rights.	The mother.
2. Where the mother is dead:	
(a) if the father is a guardian under the Guardianship of Minors Act 1971 and there is no other guardian;	The father.
(b) if the father is a guardian as mentioned in paragraph (a) above and another guardian has been appointed by the mother or by the court under the Guardianship of Minors Act 1971;	The father and the guardian if acting jointly, or the father or the guardian if the father or guardian is the sole guardian of the child.
(c) if the father is not a guardian and a guardian has been appointed by the mother or by the court under the Guardianship of Minors Act 1971.	The guardian.
3. Where the father is dead:	
(a) if there is no other guardian;	The mother.
(b) if a guardian has been appointed by the father or by the court under the Guardianship of Minors Act 1971.	The mother and the guardian if acting jointly, or the mother or the guardian if the mother or guardian is the sole guardian of the child.

1971 c.3.

Circumstances	Person or persons whose consent is required
4. Where both parents are dead:	The guardian or guardians appointed by the mother or father or by the court under the Guardianship of Minors Act 1971.

In this Part of this Schedule 'actual custody', in relation to a child, means actual possession of his person."

Orders for custody

10. For section 9 of the 1971 Act and the heading preceding that section there shall be substituted the following heading and section- Orders for custody on application of either parent.

"Orders for custody and financial relief

Orders for custody on application of either parent.

9.-(1) The court may, on the application of either parent of a child, make such order regarding-

(a) the legal custody of the child; and

(b) access to the child by either parent,

as the court thinks fit; and an order under this section may be varied or discharged by a subsequent order made on the application of either parent or, after the death of either parent, on the application of any guardian appointed under this Act.

(2) An order under this section-

(a) shall not give legal custody to a person other than a parent of the child; and

(b) shall not be made at any time when the child is free for adoption by virtue of an order made under section 18 of the Adoption Act 1976 or section 18 of the Adoption (Scotland) Act 1978." 1976 c.36. 1978 c.28.

11. For sections 10 and 11 of the 1971 Act there shall be substituted the following section- Orders for custody in guardianship cases.

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"Orders for custody in guardianship cases.

10.-(1) Where the court makes an order under section 4(4) of this Act that a person shall be sole guardian of a child to the exclusion of a parent, the court may make such order regarding-

(a) the legal custody of the child; and

(b) access to the child by the parent,

as the court thinks fit; and the powers conferred by this subsection may be exercised at any time and include power to vary or discharge any order previously made.

(2) The powers of the court under section 7 of this Act to make orders regarding matters in difference between joint guardians shall include, where a parent of the child is one of the joint guardians-

(a) power to make such order regarding-

(i) the legal custody of the child; and

(ii) access to the child by the parent,

as the court thinks fit; and

(b) power to vary or discharge any order previously made by virtue of this subsection.

(3) An order shall not be made under or by virtue of this section at any time when the child is free for adoption by virtue of an order made under section 18 of the Adoption Act 1976 or section 18 of the Adoption (Scotland) Act 1978."

Orders for financial relief

Orders for financial relief on application of either parent.

12. After section 11A of the 1971 Act there shall be inserted the following section-

"Orders for financial relief on application of either parent.

11B.-(1) The court may, on the application of either parent of a child, make-

(a) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (2) of this section;

(b) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection;

and an order mentioned in paragraph (a) or (b) of that subsection may be varied or discharged on the application of either parent or, after the

death of either parent, on the application of any guardian appointed under this Act.

(2) The orders referred to in subsection (1) of this section are—

(a) an order requiring one parent to make to the other parent for the benefit of the child, or to the child, such periodical payments, and for such term, as may be specified in the order;

(b) an order requiring one parent to secure to the other parent for the benefit of the child, or to secure to the child, such periodical payments, and for such term, as may be so specified;

(c) an order requiring one parent to pay to the other parent for the benefit of the child, or to the child, such lump sum as may be so specified;

(d) an order requiring either parent to transfer to the other parent for the benefit of the child, or to the child, such property as may be so specified, being property to which the first-mentioned parent is entitled, either in possession or reversion;

(e) an order requiring that a settlement of such property as may be so specified, being property to which either parent is so entitled, be made to the satisfaction of the court for the benefit of the child."

13. After section 11B of the 1971 Act there shall be inserted the following section— Orders for financial relief in guardianship cases.

"Orders for financial relief in guardianship cases.

11C.-(1) Where the court makes an order under section 4(4) of this Act that a person shall be sole guardian of a child to the exclusion of a parent, the court may make—

(a) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (3) of this section;

(b) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection;

and the powers conferred by this subsection may be exercised at any time and include power to vary or discharge any order mentioned in paragraph (a) or (c) of that subsection previously made.

(2) The powers of the court under section 7 of this Act to make orders regarding matters in difference between joint guardians shall include, where a parent of the child is one of the joint guardians–

(a) power to make–

(i) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (3) of this section;

(ii) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection; and

(b) power to vary or discharge any order mentioned in paragraph (a) or (b) of that subsection previously made.

(3) The orders referred to in subsections (1) and (2) of this section are–

(a) an order requiring the parent to make to the guardian or other guardian for the benefit of the child, or to the child, such periodical payments, and for such term, as may be specified in the order;

(b) an order requiring the parent to secure to the guardian or other guardian for the benefit of the child, or to secure to the child, such periodical payments, and for such term, as may be so specified;

(c) an order requiring the parent to pay to the guardian or other guardian for the benefit of the child, or to the child, such lump sum as may be so specified;

(d) an order requiring the parent to transfer to the guardian or other guardian for the benefit of the child, or to the child, such property as may be so specified, being property to which the parent is entitled, either in possession or reversion;

(e) an order requiring that a settlement of such property as may be so specified, being property to which the parent is so entitled, be made to the satisfaction of the court for the benefit of the child."

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Orders for financial relief for persons over eighteen.

14. After section 11C of the 1971 Act there shall be inserted the following section-

"Orders for financial relief for persons over eighteen.

11D.-(1) If, on an application by a person who has attained the age of eighteen and whose parents are not living with each other, it appears to the High Court or a county court-

(a) that the applicant is, will be or (if an order were made under this section) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he also is, will be or would be in gainful employment; or

(b) that there are special circumstances which justify the making of an order under this section,

the court may make one or both of the orders mentioned in subsection (2) of this section.

(2) The orders referred to in subsection (1) of this section are-

(a) an order requiring either or both of the applicant's parents to pay to the applicant such periodic payments, and for such term, as may be specified in the order; and

(b) an order requiring either or both of the applicant's parents to pay to the applicant such lump sum as may be so specified.

(3) An application may not be made under this section by any person if, immediately before he attained the age of sixteen, a periodical payments order was in force with respect to him.

(4) No order shall be made under this section at a time when the parents of the applicant are living with each other.

(5) Any order made under this section requiring the making of periodical payments shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

(6) An order under this section requiring the making of periodical payments may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.

(7) In subsection (3) of this section 'periodical

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payments order' means an order made under-

(a) this Act,

1969 c.46.

(b) section 6(3) of the Family Law Reform Act 1969,

1973 c.18.

(c) section 23 or 27 of the Matrimonial Causes Act 1973,

1975 c.72.

(d) section 34 of the Children Act 1975, or

1978 c.22.

(e) Part I of the Domestic Proceedings and Magistrates' Courts Act 1978,

for the making or securing of periodical payments."

Alteration of maintenance agreements

Alteration during lives of parties.

15.—(1) In this section and section 16 below "maintenance agreement" means any agreement in writing made in respect of a child, whether before or after the commencement of this section, being an agreement which-

(a) is or was made between the father and mother of the child; and

(b) contains provisions in respect of the making or securing of payments, or the disposition or use of any property, for the maintenance or education of the child;

and any such provisions are in this section and that section referred to as "financial arrangements".

(2) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in England and Wales, then, subject to subsection (4) below, either party may apply to the High Court, a county court or a magistrates' court for an order under this section.

(3) If the court to which the application is made is satisfied either-

(a) that, by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different financial arrangements, or

(b) that the agreement does not contain proper financial arrangements with respect to the child,

then, subject to subsections (4) and (5) below, that court may by order make such alterations in the agreement by varying or revoking any financial arrangements contained in it as may appear to that court to be just having regard to all the circumstances; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(4) A magistrates' court shall not entertain an application under subsection (2) above unless both the parties to the agreement are resident in England and Wales and at least one of the parties is resident in the commission area (within the meaning of the Justices of the Peace Act 1979) for which the court is appointed, and shall not have power to make any order on such an application except- 1979 c.55.

(a) in a case where the agreement contains no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the child;

(b) in a case where the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.

(5) Where a court decides to alter an agreement, by an order under this section-

(a) by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the child; or

(b) by increasing the rate of periodical payments required to be made or secured by one of the parties for the maintenance of the child,

then, in deciding the term for which under the agreement as altered by the order the payments or, as the case may be, the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court shall apply the provisions of subsections (1) and (2) of section 12 of the 1971 Act as if the order were an order under section 11B(2)(a) or (b) of that Act.

(6) For the avoidance of doubt it is hereby declared that nothing in this section affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

Alteration after death of one party.

16.—(1) Where a maintenance agreement provides for the continuation, after the death of one of the parties, of payments for the maintenance of the child and that party dies domiciled in England and Wales, the surviving party or the personal representatives of the deceased party may, subject to subsections (2) and (3) below, apply for an order under section 15 above.

(2) An application under this section shall not, except with the permission of the High Court or a county court, be made after the end of a period of six months from the date on which representation in regard to the estate of the deceased is first taken out.

(3) A county court shall not entertain an aplication under this section, or an application for permission to make an

Part I

application under this section, unless it would have jurisdiction to hear and determine proceedings for an order under section 2 of the Inheritance (Provision for Family and Dependants) Act 1975 in relation to the deceased's estate by virtue of section 25 of the County Courts Act 1984 (jurisdiction under the said Act of 1975).

1975 c.63.

1984 c.28.

(4) If a maintenance agreement is altered by a court on an application under this section the like consequences shall ensue as if the alteration had been made, immediately before the death, by agreement between the parties and for valuable consideration.

(5) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (2) above on the ground that they ought to have taken into account the possibility that a court might permit an application by virtue of this section to be made by the surviving party after that period; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

(6) In considering for the purposes of subsection (2) above the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

Supplemental

Abolition of affiliation proceedings. 1957 c.55.

17. The Affiliation Proceedings Act 1957 (the provisions of which are superseded by this Part) shall cease to have effect.

PART III

PROPERTY RIGHTS

Succession on intestacy. 1925 c.23.

18.—(1) In Part IV of the Administration of Estates Act 1925 (which deals with the distribution of the estate of an intestate), references (however expressed) to any relationship between two persons shall, unless the contrary intention appears, be construed in accordance with section 1 above.

(2) For the purposes of subsection (1) above and that Part of that Act, a person whose father and mother were not married to each other at the time of his birth shall be presumed not to have been survived by his father, or by any person related to him through his father, unless the contrary is shown.

(3) In section 50(1) of that Act (which relates to the construction of documents), the reference to Part IV of that Act, or to the foregoing provisions of that Part, shall in

relation to an instrument inter vivos made, or a will or codicil coming into operation, after the coming into force of this section (but not in relation to instruments inter vivos made or wills or codicils coming into operation earlier) be construed as including references to this section.

(4) This section does not affect any rights under the intestacy of a person dying before the coming into force of this section.

Dispositions of property.

19.—(1) In the following dispositions, namely—

(a) dispositions inter vivos made on or after the date on which this section comes into force; and

(b) dispositions by will or codicil where the will or codicil is made on or after that date,

references (whether express or implied) to any relationship between two persons shall, unless the contrary intention appears, be construed in accordance with section 1 above.

(2) It is hereby declared that the use, without more, of the word "heir" or "heirs" or any expression which is used to create an entailed interest in real or personal property does not show a contrary intention for the purposes of subsection (1) above.

(3) In relation to the dispositions mentioned in subsection (1) above, section 33 of the Trustee Act 1925 (which specifies the trusts implied by a direction that income is to be held on protective trusts for the benefit of any person) shall have effect as if any reference (however expressed) to any relationship between two persons were construed in accordance with section 1 above. 1925 c.19.

(4) Where under any disposition of real or personal property or any interest in such property is limited (whether subject to any preceding limitation or charge or not) in such a way that it would, apart from this section, devolve (as nearly as the law permits) along with a dignity or title of honour, then—

(a) whether or not the disposition contains an express reference to the dignity or title of honour; and

(b) whether or not the property or some interest in the property may in some event become severed from it,

nothing in this section shall operate to sever the property or any interest in it from the dignity or title, but the property or interest shall devolve in all respects as if this section had not been enacted.

(5) This section is without prejudice to section 42 of the Adoption Act 1976 (construction of dispositions in cases of adoption). 1976 c.36.

(6) In this section "disposition" means a disposition, including an oral disposition, of real or personal property whether inter vivos or by will or codicil.

Part III

(7) Notwithstanding any rule of law, a disposition made by will or codicil executed before the date on which this section comes into force shall not be treated for the purposes of this section as made on or after that date by reason only that the will or codicil is confirmed by a codicil executed on or after that date.

No special protection for trustees and personal representatives

1969 c.46.

20. Section 17 of the Family Law Reform Act 1969 (which enables trustees and personal representatives to distribute property without having ascertained that no person whose parents were not married to each other at the time of his birth, or who claims through such a person, is or may be entitled to an interest in the property) shall cease to have effect.

Entitlement to grant of probate etc.

21.—(1) For the purpose of determining the person or persons who would in accordance with probate rules be entitled to a grant of probate or administration in respect of the estate of a deceased person, the deceased shall be presumed, unless the contrary is shown, not to have been survived-

(a) by any person related to him whose father and mother were not married to each other at the time of his birth; or

(b) by any person whose relationship with him is deduced through such a person as is mentioned in paragraph (a) above.

1981 c.54.

(2) In this section "probate rules" means rules of court made under section 127 of the Supreme Court Act 1981.

(3) This section does not apply in relation to the estate of a person dying before the coming into force of this section.

PART IV

DETERMINATIONS OF RELATIONSHIPS

Declarations of parentage.

1986 c.00.

22. For section 56 of the Family Law Act 1986 (declarations of legitimacy or legitimation) there shall be substituted the following section-

"Declarations of parentage, legitimacy or legitimation.

56.-(1) Any person may apply to the court for one or more of the following declarations with respect to his parentage, that is to say-

(a) a declaration that a person named in the application is his father;

(b) a declaration that a person so named is his mother;

(c) a declaration that persons so named are his parents.

(2) Any person may apply to the court for a declaration that he is the legitimate child of his parents.

(3) Any person may apply to the court for one (or for one or, in the alternative, the other) of the following declarations, that is to say-

(a) a declaration that he has become a legitimated person;

(b) a declaration that he has not become a legitimated person.

(4) A court shall have jurisdiction to entertain an application under this section if, and only if, the applicant-

(a) is domiciled in England and Wales on the date of the application, or

(b) has been habitually resident in England and Wales throughout the period of one year ending with that date.

(5) Where a declaration is made on an application under subsection (1) above, the prescribed officer of the court shall notify the Registrar General in such a manner, and within such period, as may be prescribed of the making of that declaration.

(6) In this section 'legitimated person' means a person legitimated or recognised as legitimated-

(a) under section 2 or 3 of the Legitimacy Act 1976; 1976 c.31.

(b) under section 1 or 8 of the Legitimacy Act 1926; or 1976 c.60.

(c) by a legitimation (whether or not by virtue of the subsequent marriage of his parents) recognised by the law of England and Wales and effected under the law of another country."

Provisions as to blood tests.

23.—(1) For subsections (1) and (2) of section 20 of the Family Law Reform Act 1969 (power of court to require use of blood tests) there shall be substituted the following subsections- 1969 c.46.

"(1) In any civil proceedings in which the parentage of any person falls to be determined, the court may, either of its own motion or on an application by any party to the proceedings, give a direction-

(a) for the use of blood tests to ascertain whether such tests show that a party to the proceedings is or is not the father or mother of that person;

Part IV

and

(b) for the taking, within a period specified in the direction, of blood samples from all or any of the following, namely, that person, any party who is alleged to be the father or mother of that person and any other party to the proceedings;

and the court may at any time revoke or vary a direction previously given by it under this subsection.

(2) The person responsible for carrying out blood tests in pursuance of a direction under subsection (1) above shall make to the court a report in which he shall state—

(a) the results of the tests;

(b) whether any party to whom the report relates is or is not excluded by the results from being the father or mother of the person whose parentage is to be determined; and

(c) in relation to any party who is not so excluded, the value, if any, of the results in determining whether that party is the father or mother of that person;

and the report shall be received by the court as evidence in the proceedings of the matters stated in it.

(2A) Where the proceedings in which the parentage of any person falls to be determined are proceedings under section 56 of the Family Law Act 1986, any reference in subsection (1) or (2) of this section to any party to the proceedings shall include a reference to any person named in the application."

1986 c.00.

(2) In section 23(2) of that Act (failure to comply with direction for taking blood tests) for the word "paternity" there shall be substituted the word "parentage".

PART V

REGISTRATION OF BIRTHS

Registration of father where parents not married. 1953 c.20.

24. For section 10 of the Births and Deaths Registration Act 1953 (in this Act referred to as "the 1953 Act") there shall be substituted the following section—

"Registration of father where parents not married.

10.-(1) Notwithstanding anything in the foregoing provisions of this Act, in the case of a child whose father and mother were not married to each other at the time of his birth, no person shall as father of the child be

required to give information concerning the birth of the child, and the registrar shall not enter in the register the name of any person as father of the child except-

(a) at the joint request of the mother and the person stating himself to be the father of the child (in which case that person shall sign the register together with the mother); or

(b) at the request of the mother on production of-

(i) a declaration in the prescribed form made by the mother stating that that person is the father of the child; and

(ii) a statutory declaration made by that person stating himself to be the father of the child; or

(c) at the request of that person on production of-

(i) a declaration in the prescribed form by that person stating himself to be the father of the child; and

(ii) a statutory declaration made by the mother stating that that person is the father of the child; or

(d) at the request of the mother or that person (which shall in either case be made in writing) on production of-

(i) a certified copy of a relevant order; and

(ii) if the child has attained the age of sixteen, the written consent of the child to the registration of that person as his father.

(2) Where, in the case of a child whose father and mother were not married to each other at the time of his birth, a person stating himself to be the father of the child makes a request to the registrar in accordance with paragraph (c) or (d) of subsection (1) of this section-

(a) he shall be treated as a qualified informant concerning the birth of the child for the purposes of this Act; and

(b) the giving of information concerning the birth of the child by that person and the signing of the register by him in the presence of the registrar shall act as a discharge of any duty of any other qualified informant under section 2 of this Act.

Part V

(3) In this section and section 10A of this Act references to a child whose father and mother were not married to each other at the time of his birth shall be construed in accordance with section 1 of the Family Law Reform Act 1987 and 'relevant order', in relation to a request under subsection (1)(d) that the name of any person be entered in the register as father of a child, means any of the following orders, namely—

(a) an order under section 4 of the said Act of 1987 which gives that person all the parental rights and duties with respect to the child;

(b) an order under section 9 of the Guardianship of Minors Act 1971 which gives that person any parental right with respect to the child; and

1971 c.3.

(c) an order under section 11B of that Act which requires that person to make any financial provision for the child."

Re-registration where parents not married.

25. For section 10A of the 1953 Act there shall be substituted the following section—

"Re-registration where parents not married.

10A.-(1) Where there has been registered under this Act the birth of a child whose father and mother were not married to each other at the time of the birth, but no person has been registered as the father of the child, the registrar shall re-register the birth so as to show a person as the father-

(a) at the joint request of the mother and that person; or

(b) at the request of the mother on production of-

(i) a declaration in the prescribed form made by the mother stating that that person is the father of the child; and

(ii) a statutory declaration made by that person stating himself to be the father of the child; or

(c) at the request of that person on production of-

(i) a declaration in the prescribed form by that person stating himself to be the father of the child; and

(ii) a statutory declaration made by the mother stating that

that person is the father of the child; or

(d) at the request of the mother or that person (which shall in either case be made in writing) on production of-

(i) a certified copy of a relevant order; and

(ii) if the child has attained the age of sixteen, the written consent of the child to the registration of that person as his father;

but no birth shall be re-registered under this section except in the prescribed manner and with the authority of the Registrar General.

(2) On the re-registration of a birth under this section-

(a) the registrar shall sign the register;

(b) in the case of a request under paragraph (a) or (b) of subsection (1) of this section, or a request under paragraph (d) of that subsection made by the mother of the child, the mother shall also sign the register;

(c) in the case of a request under paragraph (a) or (c) of that subsection, or a request made under paragraph (d) of that subsection by the person requesting to be registered as the father of the child, that person shall also sign the register; and

(d) if the re-registration takes place more than three months after the birth, the superintendent registrar shall also sign the register."

Re-registration after declaration of parentage.

26. After section 14 of the 1953 Act there shall be inserted the following section-

"Re-registration after declaration of parentage.

14A. Where-

(a) the Registrar General receives, by virtue of section 56(5) of the Family Law Act 1986, a notification of the making of a declaration of parentage in respect of any person; and 1986 c.00.

(b) it appears to him that the birth of that person should be re-registered,

he shall authorise the re-registration of that person's birth, and the re-registration shall be effected in such manner and at such place as

...n, that ...ction (1) ...shall be ... of the ... after ...

Part V

may be prescribed."

PART VI

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

Artificial insemination.

27.—(1) Where after the coming into force of this section a child is born in England and Wales as the result of the artificial insemination of a woman who-

(a) was at the time of the insemination a party to a marriage (being a marriage which had not at that time been dissolved or annulled), and

(b) was artificially inseminated with the semen of some person other than the other party to that marriage,

then, unless it is proved to the satisfaction of any court by which the matter has to be determined that the other party to that marriage did not consent to the insemination, the child shall be treated in law as the child of the parties to that marriage and shall not be treated as the child of any person other than the parties to that marriage.

(2) Any reference in this section to a marriage includes a reference to a void marriage if at the time of the insemination resulting in the birth of the child both or either of the parties reasonably believed that the marriage was valid; and for the purposes of this section it shall be presumed, unless the contrary is shown, that one of the parties so believed at that time that the marriage was valid.

(3) Nothing in this section shall affect the succession to any dignity or title of honour or render any person capable of succeeding to or transmitting a right to succeed to any such dignity or title.

Children of void marriages. 1976 c.31.

28.—(1) In subsection (1) of section 1 of the Legitimacy Act 1976 (legitimacy of children of certain void marriages), after the words "the act of intercourse resulting in the birth" there shall be inserted the words "or, where there was no such act, the conception".

(2) At the end of that section there shall be added the following subsections-

"(3) It is hereby declared for the avoidance of doubt that subsection (1) above applies notwithstanding that the belief that the marriage was valid was due to a mistake as to law.

(4) In relation to a child born after the coming into force of section 28 of the Family Law Reform Act 1987, it shall be presumed for the purposes of subsection (1) above, unless the contrary is shown, that one of the parties to

the void marriage reasonably believed at the time of the act of intercourse resulting in the birth or, where there was no such act, the conception (or at the time of the celebration of the marriage if later) that the marriage was valid."

Evidence of paternity in civil proceedings. 1968 c.64.

29.—(1) Section 12 of the Civil Evidence Act 1968 (which relates to the admissibility in evidence in civil proceedings of the fact that a person has been adjudged to be the father of a child in affiliation proceedings) shall be amended as follows.

(2) For paragraph (b) of subsection (1) there shall be substituted the following paragraph—

"(b) the fact that a person has been found to be the father of a child in relevant proceedings before any court in England and Wales or has been adjudged to be the father of a child in affiliation proceedings before any court in the United Kingdom;".

(3) In subsection (2) for the words "to have been adjudged" there shall be substituted the words "to have been found or adjudged" and for the words "matrimonial or affiliation proceedings" there shall be substituted the words "other proceedings".

(4) In subsection (6) after the definition of "matrimonial proceedings" there shall be inserted the following definition—

"relevant proceedings" means—

(a) proceedings on a complaint under section 42 of the National Assistance Act 1948 or section 26 of the Social Security Act 1986; 1948 c.29. 1986 c.50.

(b) proceedings on an application for an order under any of the following, namely—

(i) section 6 of the Family Law Reform Act 1969; 1969 c.46.

(ii) the Guardianship of Minors Act 1971; 1971 c.3.

(iii) section 34(1)(a), (b) or (c) of the Children Act 1975; 1975 c.72.

(iv) section 47 of the Child Care Act 1980; and 1980 c.5.

(v) section 4 of the Family Law Reform Act 1987;

(c) proceedings on an application under section 35 of the said Act of 1985 for the revocation of a custodianship order;".

Supplemental

Application of section 1 to other enactments.

30.—(1) The Lord Chancellor may by order make provision for the construction in accordance with section 1 above of such enactments passed before the coming into force of that section as may be specified in the order.

Part VI

(2) An order under this section shall so amend the enactments to which it relates as to secure that they continue the same effect, notwithstanding the making of the order.

(3) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Interpretation.

31. In this Act-

1953 c.20. "the 1953 Act" means the Births and Deaths Registration Act 1953;

1971 c.3. "the 1971 Act" means the Guardianship of Minors Act 1971;

1973 c.29. "the 1973 Act" means the Guardianship Act 1973.

Text of 1971 Act as amended.

32. The 1971 Act (excluding consequential amendments of other enactments and savings) is set out in Schedule 1 to this Act as it will have effect, subject to sections 33(2) and 34(3) below, when all the amendments and repeals made in it by this Act come into force.

Amendments, transitional provisions, savings and repeals.

33.—(1) The enactments mentioned in Schedule 2 to this Act shall have effect subject to the amendments there specified, being minor amendments and amendments consequential on the provisions of this Act.

(2) The transitional provisions and savings in Schedule 3 to this Act shall have effect.

(3) The inclusion in this Act of any express saving or amendment shall not be taken as prejudicing the operation of sections 16 and 17 of the Interpretation Act 1978 (which relate to the effect of repeals).

(4) The enactments mentioned in Schedule 4 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

Short title, commencement and extent.

34.—(1) This Act may be cited as the Family Law Reform Act 1987.

(2) This Act shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint; and different days may be so appointed for different provisions or different purposes.

(3) Without prejudice to the transitional provisions contained in Schedule 3 to this Act, an order under subsection (2) above may make such further transitional provisions as appear to the Lord Chancellor to be necessary or expedient in connection with the provisions brought into force by the order, including-

(a) such adaptations of the provisions so brought

into force; and

(b) such adaptations of any provisions of this Act then in force,

as appear to him necessary or expedient in consequence of the partial operation of this Act.

(4) The following provisions of this Act extend to Scotland and Northern Ireland , namely-

(a) section 33(1) and paragraphs 12 and 13 of Schedule 2;

(b) section 33(4) and Schedule 4 so far as relating to the Maintenance Orders Act 1950; and 1950 c.37.

(c) this section.

(5) Subject to subsection (4) above, this Act extends to England and Wales only.

SCHEDULES

Section 32.

SCHEDULE 1

TEXT OF 1971 ACT AS AMENDED

[In the provisions set out in this Schedule the words inserted by the Bill are set out in **heavy type**]

ARRANGEMENT OF SECTIONS

Orders for custody and financial relief Sch. 1

Access to children by grandparents

Jurisdiction and procedure

Supplementary

An Act to consolidate certain enactments relating to the guardianship and custody of minors.

(Formal enacting words)

General principles

Principle on which questions relating to custody, upbringing etc. of children are to be decided.

1.—(1) Where in any proceedings before any court (whether or not a court as defined in section 15 of this Act)—

(a) the legal custody or upbringing of a **child**; or

(b) the administration of any property belonging to or held on trust for a **child**, or the application of the income thereof,

is in question, the court in deciding that question, shall regard the welfare of the **child** as the first and paramount consideration, and shall not take into consideration whether

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from any other point of view the claim of the father in respect of such legal custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father.

. . . . . .

Appointment, removal and powers of guardians

Rights of surviving parent as to guardianship.

3.—(1) On the death of the father of a child, the mother, if surviving, shall, subject to the provisions of this Act, be guardian of the child either alone or jointly with any guardian appointed by the father; and—

(a) where no guardian has been appointed by the father; or

(b) in the event of the death or refusal to act of the guardian or guardians appointed by the father,

the court may, if it thinks fit, appoint a guardian to act jointly with the mother.

(2) On the death of the mother of a child, the father, if surviving, shall, subject to the provisions of this Act, be guardian of the child either alone or jointly with any guardian appointed by the mother; and—

(a) where no guardian has been appointed by the mother; or

(b) in the event of the death or refusal to act of the guardian or guardians appointed by the mother,

the court may, if it thinks fit, appoint a guardian to act jointly with the father.

(3) Where the father and mother of a child were not married to each other at the time of his birth, this section does not apply unless the father satisfies the conditions of subsection (4) of this section.

(4) The father of a child satisfies the conditions of this subsection if—

(a) an order is in force under section 4 of the Family Law Reform Act 1987 giving him all the parental rights and duties with respect to the child; or

(b) he has a right to custody, legal or actual custody or care and control of the child by virtue of an order made under any other enactment.

Power of father and mother to appoint testamentary guardians.

4.—(1) The father of a child may by deed or will appoint any person to be guardian of the child after his death.

(2) The mother of a child may by deed or will appoint any person to be guardian of the child after her death.

(3) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the child so long as the mother or father remains alive unless the mother or father objects to his so acting.

(4) If the mother or father so objects, or if the guardian so appointed considers that the mother or father is unfit to have the custody of the child, the guardian may apply to the court, and the court may either—

(a) refuse to make any order (in which case the mother or father shall remain sole guardian); or

(b) make an order that the guardian so appointed—

(i) shall act jointly with the mother or father; or

(ii) shall be the sole guardian of the child.

(5) Where guardians are appointed by both parents, the guardians so appointed shall, after the death of the surviving parent, act jointly.

(6) If under section 3 of this Act a guardian has been appointed by the court to act jointly with a surviving parent, he shall continue to act as guardian after the death of the surviving parent; but, if the surviving parent has appointed a guardian, the guardian appointed by the court shall act jointly with the guardian appointed by the surviving parent.

(7) Where the father and mother of a child were not married to each other at the time of his birth—

(a) subsection (1) of this section does not apply, and subsection (3) of this section does not apply in relation to a guardian appointed by the mother, unless the father satisfies the conditions of section 3(4) of this Act;

(b) any appointment under subsection (1) of this section shall be of no effect unless the father satisfies those conditions immediately before his death.

Power of court to appoint guardian for child having no parent etc.

5 —(1) Where a child has no parent, no guardian of the person, and no other person having parental rights with respect to him, the court, on the application of any person, may, if it thinks fit, appoint the applicant to be the guardian of the child.

(2) A court may entertain an applicant under this section to appoint a guardian of a child notwithstanding that parental rights and duties with respect to the child are vested in a local authority or a voluntary organisation by virtue of a resolution under section 3 or 4 of the Child Care Act 1980.

(3) Where the father and mother of a child were not married to each other at the time of his birth, subsection (1) of this section shall have effect as if for the words "no parent" there were substituted the words "no mother, no father satisfying the conditions of section 3(4) of this Act".

Power of High Court to remove or replace guardian.

6 The High Court may in its discretion on being satisfied that it is for the welfare of the child remove from his office any testamentary guardian or any guardian appointed

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or acting by virtue of this Act, and may also, if it deems it to be for the welfare of the child, appoint another guardian in place of the guardian so removed.

Disputes between joint guardians.

7 Where two or more persons act as joint guardians of a child and they are unable to agree on any question affecting the welfare of the child, any of them may apply to the court for its direction and the court may make such order regarding the matters in difference that it may think proper.

. . . . . .

Orders for custody and financial relief

Orders for custody on application of either parent.

9—(1) The court may, on the application of either parent of a child, make such order regarding—

(a) the legal custody of the child; and

(b) access to the child by either parent,

as the court thinks fit; and an order under this section may be varied or discharged by a subsequent order made on the application of either parent or, after the death of either parent, on the application of any guardian appointed under this Act.

(2) An order under this section—

(a) shall not give legal custody to a person other than a parent of the child; and

(b) shall not be made at any time when the child is free for adoption by virtue of an order made under section 18 of the Adoption Act 1976 or section 18 of the Adoption (Scotland) Act 1978.

1976 c.36.
1978 c.28.

(3) An order shall not be made under or by virtue of this section at any time when the child is free for adoption by virtue of an order made under section 18 of the Adoption Act 1976 or section 18 of the Adoption (Scotland) Act 1978.

Orders for custody in guardianship cases.

10—(1) Where the court makes an order under section 4(4) of this Act that a person shall be sole guardian of a child to the exclusion of a parent, the court may make such order regarding—

(a) the legal custody of the child; and

(b) access to the child by the parent,

as the court thinks fit; and the powers conferred by this subsection may be exercised at any time and include power to vary or discharge any order previously made.

(2) The powers of the court under section 7 of this Act to make orders regarding matters in difference between joint guardians shall include, where a parent of the child is one of the joint guardians—

(a) power to make such order regarding—

(i) the legal custody of the child; and

(ii) access to the child by the parent,

as the court thinks fit; and

(b) power to vary or discharge any order previously made by virtue of this subsection.

Further provisions relating to orders for custody.

11A—(1) An order shall not be made under **section 9 or 10** of this Act giving the legal custody of a **child** to more than one person; but where the court makes an order under one of those sections giving the legal custody of a **child** to any person it may order that a parent of the **child** who is not given the legal custody of the **child** shall retain all or such as the court may specify of the parental rights and duties comprised in legal custody (other than the right to the actual custody of the **child**) and shall have those rights and duties jointly with the person who is given the legal custody of the **child**.

(2) Where the court makes an order under **section 9 or 10** of this Act the court may direct that the order, or such provision thereof as the court may specify, shall not have effect until the occurence of an event specified by the court or the expiration of a period so specified; and where the court has directed that the order or any provision thereof shall not have effect until the expiration of a specified period, the court may, at any time before the expiration of that period, direct that the order, or that provision thereof, shall not have effect until the expiration of such further period as the court may specify.

(3) Any order made in respect of a **child** under **section 9 or 10** of this Act shall cease to have effect when the **child** attains the age of eighteen.

Orders for financial relief on application of either parent.

11B—(1) The court may, on the application of either parent of a child, make—

(a) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (2) of this section;

(b) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection;

and an order mentioned in paragraph (a) or (b) of that subsection may be varied or discharged on the application of either parent or, after the death of either parent, on the application of any guardian appointed under this Act.

(2) The orders referred to in subsection (1) of this section are—

(a) an order requiring one parent to make to the other parent for the benefit of the child, or to the child, such periodical payments, and for such term, as may be specified in the order;

(b) an order requiring one parent to secure to the other parent for the benefit of the child, or to secure to the child, such periodical payments, and

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for such term, as may be so specified;

(c) an order requiring one parent to pay to the other parent for the benefit of the child, or to the child, such lump sum as may be so specified;

(d) an order requiring either parent to transfer to the other parent for the benefit of the child, or to the child, such property as may be so specified, being property to which the first-mentioned parent is entitled, either in possession or reversion;

(e) an order requiring that a settlement of such property as may be so specified, being property to which either parent is so entitled, be made to the satisfaction of the court for the benefit of the child.

Orders for financial relief in guardianship cases.

11C—(1) Where the court makes an order under section 4(4) of this Act that a person shall be sole guardian of a child to the exclusion of a parent, the court may make—

(a) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (3) of this section;

(b) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection;

and the powers conferred by this subsection may be exercised at any time and include power to vary or discharge any order mentioned in paragraph (a) or (c) of that subsection previously made.

(2) The powers of the court under section 7 of this Act to make orders regarding matters in difference between joint guardians shall include, where a parent of the child is one of the joint guardians—

(a) power to make—

(i) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (3) of this section;

(ii) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection; and

(b) power to vary or discharge any order mentioned in paragraph (a) or (b) of that subsection previously made.

(3) The orders referred to in subsections (1) and (2) of this section are—

(a) an order requiring the parent to make to the guardian or other guardian for the benefit of the child, or to the child, such periodical payments, and for such term, as may be specified in the order;

(b) an order requiring the parent to secure to the guardian or other guardian for the benefit of the

child, or to secure to the child, such periodical payments, and for such term, as may be so specified;

(c) an order requiring the parent to pay to the guardian or other guardian for the benefit of the child, or to the child, such lump sum as may be so specified;

(d) an order requiring the parent to transfer to the guardian or other guardian for the benefit of the child, or to the child, such property as may be so specified, being property to which the parent is entitled, either in possession or reversion;

(e) an order requiring that a settlement of such property as may be so specified, being property to which the parent is so entitled, be made to the satisfaction of the court for the benefit of the child.

Orders for financial relief for persons over eighteen.

11D.—(1) If, on an application by a person who has attained the age of eighteen and whose parents are not living with each other, it appears to the High Court or a county court—

(a) that the applicant is, will be or (if an order were made under this section) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he also is, will be or would be in gainful employment; or

(b) that there are special circumstances which justify the making of an order under this section,

the court may make one or both of the orders mentioned in subsection (2) of this section.

(2) The orders referred to in subsection (1) of this section are—

(a) an order requiring either or both of the applicant's parents to pay to the applicant such periodic payments, and for such term, as may be specified in the order; and

(b) an order requiring either or both of the applicant's parents to pay to the applicant such lump sum as may be so specified.

(3) An application may not be made under this section by any person if, immediately before he attained the age of sixteen, a periodical payments order was in force with respect to him.

(4) No order shall be made under this section at a time when the parents of the applicant are living with each other.

(5) Any order made under this section requiring the making of periodical payments shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

(6) An order under this section requiring the making of periodical payments may be varied or discharged by a

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subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.

(7) In subsection (3) of this section 'periodical payments order' means an order made under—

(a) this Act,

1969 c.46. (b) section 6(3) of the Family Law Reform Act 1969,

1973 c.18. (c) section 23 or 27 of the Matrimonial Causes Act 1973,

1975 c.72. (d) section 34 of the Children Act 1975, or

1978 c.22. (e) Part I of the Domestic Proceedings and Magistrates' Courts Act 1978,

for the making or securing of periodical payments.

Duration of orders for periodical payments.

12.—(1) The term to be specified in an order for periodical payments made by virtue of section 11B(2)(a) or 11C(3)(a) 11B(2)(b) or 11C(3)(b) of this Act in favour of a child may begin with the date of the making of an application for the order in question or any later date but—

(a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age (that is to say, the age that is for the time being that limit by virtue of section 35 of the 1944 c.31. Education Act 1944 together with any Order in Council made under that section) unless the court thinks it right in the circumstances in the case to specify a later date: and

(b) shall not in any event, subject to subsection (2) below, extend beyond the date of the child's eighteenth birthday.

(2) Paragraph (b) of subsection (1) above shall not apply in the case of a child if it appears to the court that—

(a) the child is, or will be, or if an order were made without complying with that paragraph would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or

(b) there are special circumstances which justify the making of an order without complying with that paragraph.

(3) An order for secured periodical payments made by virtue of section 11B(2)(a) or 11C(3)(a) of this Act shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

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Matters to which court is to have regard in making orders for financial relief.

12A In deciding whether to exercise its powers under **section 11B, 11C or 11D** of this Act and, if so, in what manner, the court shall have regard to all the circumstances of the case including the following matters, that is to say—

(a) the income, earning capacity, property and other financial resources which the mother or father of the **child** has or is likely to have in the foreseeable future;

(b) the financial needs, obligations and responsibilities which the mother or father of the **child** has or is likely to have in the foreseeable future;

(c) the financial needs of the **child**;

(d) the income, earning capacity (if any), property and other financial resources of the **child**;

(e) any physical or mental disability of the **child**.

Provisions relating to lump sums.

12B (1) Without prejudice to the generality of **sections 11B and 11C** of this Act, an order under any of those provisions for the payment of a lump sum may be made for the purpose of enabling any liabilities or expenses reasonably incurred before the making of the order to be met, **being liabilities or expenses incurred in connection with the birth of the child or in maintaining the child.**

(2) The amount of any lump sum required to be paid by an order made by the magistrates' court under **section 11B, 11C or 11D** of this Act shall not exceed £500 or such larger amount as the Secretary of State may from time to time by order fix for the purposes of this subsection.

Any order made by the Secretary of State under this subsection shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) The power of the court under **section 11B, 11C or 11D** of this Act to vary of discharge an order for the making **or securing** of periodical payments by a parent shall include power to make an order under the said **section 11B, 11C or 11D**, as the case may be, for the payment of a lump sum by that parent.

(4) The amount of any lump sum which a parent may be required to pay by virtue of subsection (3) above shall not, in the case of an order made by a magistrates' court, exceed the maximum amount that may at the time of the making of the order be required to be paid under subsection (2) above, but a magistrates' court may make an order for the payment of a lump sum not exceeding that amount notwithstanding that the parent was required to pay a lump sum by a previous order under this Act.

(5) An order made under **section 11B, 11C or 11D** of this Act for the payment of a lump sum may provide for the payment of that sum by instalments and where the court provides for the payment of a lump sum by instalments the court, on an application made either by the person liable to

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pay or the person entitled to receive that sum, shall have power to vary that order by varying the number of instalments payable, the amount of any instalment payable and the date on which any instalment becomes payable.

Variation etc. of orders for periodical payments.

12C—(1) In exercising its powers under **section 11B, 11C or 11D** of this Act to vary or discharge an order for the making **or securing** of periodical payments the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order.

(2) The power of the court under section **11B, 11C or 11D** of this Act to vary an order for the making **or securing** of periodical payments shall include power to suspend any provision thereof temporarily and to revive any provision so suspended.

(3) Where on an application under **section 11B, 11C or 11D** of this Act for the variation or discharge of an order for the making **or securing** of periodical payments the court varies the payment required to be made under that order, the court may provide that the payments as so varied shall be made from such date as the court may specify, no being earlier than the date of the making of the application.

(4) An application for the variation of an order made under **section 11B or 11C** of this Act for the making **or securing** of periodical payments to or for the benefit of a **child** may, if the **child** has attained the age of sixteen, be made by the **child** himself.

(5) Where an order for the making of periodical payments made under section 11B or 11C of this Act ceases to have effect on the date on which the child attains the age of 16 or at any time after that date but before or on the date on which he attains the age of 18, the child may apply—

(a) in the case of an order made by the High Court or a county court, to the court which made the order, or

(b) in the case of an order made by a magistrates' court, to the High Court or a county court,

for an order for the revival of the first mentioned order.

(6) If on such an application it appears to the High Court or county court that—

(a) the child is, or will be, or if an order were made under this subsection would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or

(b) there are special circumstances which justify the making of an order under this subsection,

the court shall have power by order to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application.

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(7) Any order made under section 11B or 11C of this Act by the High Court or a county court which is revived by an order under subsection (5) above may be varied or discharged under section 11B or 11C of this Act, as the case may be, on the application of any person by whom or to whom payments are required to be made under the order.

(8) Any order made under section 11B or 11C of this Act by a magistrates' court which is revived by an order of the High Court or a county court under subsection (5) above—

(a) for the purposes of the variation and discharge of the order, shall be treated as an order of the court by which it was revived and may be varied or discharged by that court on the application of any person by whom or to whom payments are required to be made under the order; and

(b) for the purposes of the enforcement of the order, shall be treated as an order of the magistrates' court by which the order was originally made.

Variation of orders for secured periodical payments after death of parent.

12D.—(1) Where the parent liable to make payments under a secured periodical payments order has died, the persons who may apply for the variation or discharge of the order shall include the personal representatives of the deceased parent, and no application for the variation of the order shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that parent is first taken out.

(2) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (1) of this section on the ground that they ought to have taken into account the possibility that the court might permit an application for variation to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the variation of an order in accordance with this section.

(3) Where an application to vary a secured periodical payments order is made after the death of the parent liable to make payments under the order, the circumstances to which the court is required to have regard under section 12C(1) of this Act shall include the changed circumstances resulting from the death of that parent.

(4) In considering for the purposes of subsection (1) of this section the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

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(5) In this section "secured periodical payments order" means an order for secured periodical payments made by virtue of section 11B(2)(b) or 11C(3)(b) of this Act.

Enforcement of orders for custody and maintenance.

13.—(1) Where an order made by a magistrates' court under this Act contains a provision committing to any person the actual custody of any child, a copy of the order may be served on any person in whose actual custody the child may for the time being be, thereupon the provision may, without prejudice to any other remedy open to the person given the custody, be enforced under section 63(3) of the Magistrates' Courts Act 1980 as if it were an order of the court requiring the person so served to give up the child to the person given the custody.

1980 c.43.

(2) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money made by a magistrates' court under this Act shall give notice of any change of address to such person (if any) as may be specified in the order, and any person failing without reasonable excuse to give such a notice shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(3) Any order for the payment of money made by a magistrates' court under this Act shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980.

Restriction on removal of child from England and Wales.

13A.—(1) Where the court makes—

(a) an order under section 9 or 10 of this Act regarding the legal custody of a child, or

(b) an interim order under section 2(4) of the Guardianship Act 1973 containing provision regarding the legal custody of a child,

1973 c.29.

the court, on making the order or at any time while the order is in force, may, if an application is made under this section, by order direct that no person shall take the child out of England and Wales while the order under this section is in force, except with the leave of the court.

(2) An order made under subsection (1) above may be varied or discharged by a subsequent order.

(3) An application for an order under subsection (1) above, or for the variation or discharge of such an order, may be made by any party to the proceedings in which the order mentioned in paragraph (a) or (b) of that subsection was made.

Direction for settlement of instrument by conveyancing counsel.

13B Where the High Court or a county court decides to make an order under this Act for the securing of periodical payments or for the transfer or settlement of property, it may direct that the matter be referred to one of the conveyancing counsel of the court for him to settle a proper instrument to be executed by all necessary parties.

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Access to children by grandparents

Access to children by grandparents.

14A—(1) The court, on making an order under **section 9** of this Act, or at any time while such an order is in force, may on the application of a grandparent of the **child** make such order requiring access to the **child** to be given to the grandparents as the court thinks fit.

(2) Where one parent of a **child** is dead, or both parents are dead, the court may, on an application made by a parent of a deceased parent of the **child**, make such order requiring access to the **child** to be given to the applicant as the court thinks fit.

(3) Section 11A(2) of this Act shall apply in relation to an order made under this section as it applies in relation to an order under **section 9 or 10** of this Act.

(4) The court shall not make an order under this section with respect to a **child** who is for the purposes of Part III of the Child Care Act 1980 in the care of a local authority.

(5) Where the court has made an order under subsection (1) above requiring access to a **child** to be given to a grandparent, the court may vary or discharge that order on an application made—

(a) by that grandparent, or

(b) by either parent of the **child**, or

(c) if **before 1st December 1985 the court has made an order under section 9** of this Act giving the legal custody of the **child** to a person other than one of the parents, by that person.

(6) Where the court has made an order under subsection (2) above requiring access to a **child** to be given to a grandparent, the court may vary or discharge that order on an application made—

(a) by that grandparent, or

(b) by any surviving parent of the **child**, or

(c) by any guardian of the **child**.

(7) Section 6 of the Guardianship Act 1973 shall apply in relation to an application under this section as it applies in relation to an application under section 5 or 9 of this Act, and any reference to a party to the proceedings in subsection (2) or (3) of the said section 6 shall include— 1973 c.29.

(a) in the case of an application under subsection (1) or (2) above, a reference to the grandparent who has made an application under either of those subsections,

(b) in the case of an application under subsection (5) or (6) above, a reference to the grandparent who has access to the **child** under the order for the variation or discharge of which the application is made.

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(8) Where, at any time after an order with respect to a **child** has been made under subsection (1) above, no order is in force under section 9 of this Act with respect to that **child**, the order made under subsection (1) above shall cease to have effect.

Jurisdiction and procedure

Courts having jurisdiction under this Act.

15.—(1) Subject to the provisions of this section "the court" for the purposes of this Act means the High Court, any county court or any magistrates' court, except that provision may be made by rules of court that in the case of such applications to a county court, or such applications to a magistrates' court, as are prescribed, only such county courts, or as the case may be such magistrates' courts, as are prescribed shall be authorised to hear those applications.

(2) A magistrates' court shall not be competent to entertain—

. . . . . .

(b) any application involving the administration or application of any property belonging to or held in trust for a **child** or the income thereof.

(2A) It is hereby declared that any power conferred on a magistrates' court under this Act is exercisable notwithstanding that any party to the proceedings is residing outside England and Wales.

(2B) Where any party to the proceedings on an application to a magistrates' court under this Act resides outside the United Kingdom and does not appear at the time and place appointed for the hearing of the application, the court shall not hear the application unless it is proved to the satisfaction of the court, in such manner as is prescribed, that such steps as are prescribed have been taken to give to that party notice of the application and of the time and place appointed for the hearing of it.

(2C) In this section "prescribed" means prescribed by rules of court.

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Financial provision for child resident in country outside England and Wales.

15A.—(1) Where one parent of a **child** resides in England and Wales and the other parent and the **child** reside outside England and Wales, the court shall have power, on an application made by that other parent, to make one or both of the orders mentioned in **section 11B(2)(a) and (b)** of this Act against the parent resident in England and Wales ..... ; and in relation to such an application **section 11B(2)(a) and (b)** shall have effect as if for any reference to the parent excluded from actual custody there were substituted a reference to the parent resident in England and Wales.

(2) Any reference in this Act to the powers of the court under **section 11B(2)** of this Act or to an order made under the said **section 11B(2)** shall include a reference to the

powers which the court has by virtue of subsection (1) above or, as the case may be, to an order made by virtue of subsection (1) above.

16. . . . . Appeals and procedure.

(3) Subject to subsection (4) of this section, where on an application to a magistrates' court under this Act the court makes or refuses to make an order, an appeal shall lie to the High Court.

(4) Where an application is made to a magistrates' court under this Act, and the court considers that the matter is one which would more conveniently be dealt with by the High Court, the magistrates' court shall refuse to make an order, and in that case no appeal shall lie to the High Court.

(5) In relation to applications made to a magistrates' court under section 14A of this Act regarding access to a child by a grandparent or under section 3(3) or 4(3A) of the Guardianship Act 1973 for the discharge or variation of a supervision order or, as the case may be, an order giving the care of a child to a local authority or an order, requiring payments to be made to an authority to whom care of a child is so given, rules made under section 144 of the Magistrates' Courts Act 1980 may make provision as to the persons who are to be made defendants on the application; and if on any such application there are two or more defendants, the power of the court under section 64(1) of the Magistrates' Courts Act 1980 shall be deemed to include power, whatever adjudication the court makes on the complaint, to order any of the parties to pay the whole part of the costs of all or any of the other parties.

1973 c.29.

1980 c.43.

(6) On an appeal under subsection (3) of this section the High Court shall have power to make such orders as may be necessary to give effect to its determination of the appeal including such incidental or consequental orders as appear to the court to be just, and, in the case of an appeal from a decision of a magistrates' court on an application for or in respect of an order for the making of periodical payments, the High Court shall have power to order that its determination of the appeal shall have effect from such date as the court thinks fit, not being earlier than the date of the making of the application to the magistrates' court.

(7) Without prejudice to the generality of subsection (6) above, where, on an appeal under subsection (3) of this section in respect of an order of a magistrates' court requiring a parent of a child to make periodical payments, the High Court reduces the amount of those payments or discharges the order, the High Court shall have power to order the person entitled to payments under the order of the magistrates' court to pay to that parent such sum in respect of payments already made by the parent in compliance with the order as the High Court thinks fit and if any arrears are due under the order of the magistrates' court, the High Court shall have power to remit the payment of those arrears or any part thereof.

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(8) Any order of the High Court made on an appeal under subsection (3) of this section (other than an order directing that an application shall be re-heard by a magistrates' court) shall for the purposes of the enforcement of the order and for the purposes of any power to vary, revive or discharge orders conferred by section 9(1), 10(1) or (2)(b), 11B(1), 11C(1) or (2)(b), 11D(6), 12B(5) or 12C(2) of this Act or section 3(3) or 4(3A) of the Guardianship Act 1973 be treated as if it were an order of the magistrates' court from which the appeal was brought and not of the High Court.

Saving for powers of High Court and other courts.

17.—(1) Nothing in this Act shall restrict or affect the jurisdiction of the High Court to appoint or remove guardians or otherwise in respect of children.

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Supplementary

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Short title, interpretation and extent.

20.—(1) This Act may be cited as the Guardianship of Minors Act 1971.

(2) In this Act, unless the context otherwise requires—

"actual custody", as respects a child, means the actual possession of the person of the child;

"child", except where used to express a relationship, means a person who has not attained the age of eighteen;

"legal custody" shall be construed in accordance with Part IV of the Children Act 1975;

"maintenance" includes education.

(2A) In this Act—

(a) references (however expressed) to any relationship between two persons; and

(b) references to the father and mother of a child not being married to each other at the time of his birth,

shall be construed in accordance with section 1 of the Family Law Reform Act 1987.

(2B) References in this Act to the parents of an applicant living with each other shall be construed as references to their living with each other in the same household.

(3) References in this Act to any enactment are references thereto as amended, and include references thereto as applied, by any other enactment.

(4) This Act—

1950 c.37.

(a) so far as it amends the Maintenance Orders Act 1950 extends to Scotland and Northern Ireland,

. . . . . .

but, save as aforesaid, extends to England and Wales only. Sch. 1

SCHEDULE 2

Section 33(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

The Maintenance Orders (Facilities for Enforcement) Act 1920 (c.33)

1. In section 6(2) of the Maintenance Orders (Facilities for Enforcement) Act 1920–

(a) for the words "in like manner as an order of affiliation" there shall be substituted the words "as a magistrates' court maintenance order";

(b) at the end of that subsection there shall be inserted the words–

"In this subsection 'magistrates' court maintenance order' has the same meaning as in section 150(1) of the Magistrates' Courts Act 1980." 1980 c.43.

The Trustee Act 1925 (c.19)

2. At the end of section 33 of the Trustee Act 1925 there shall be added the following subsection—

"(4) In relation to the dispositions mentioned in section 19(1) of the Family Law Reform Act 1987, this section shall have effect as if any reference (however expressed) to any relationship between two persons were construed in accordance with section 1 of that Act."

The Administration of Estates Act 1925 (c.23)

3. At the end of section 50 of the Administration of Estates Act 1925 there shall be added the following subsection—

"(3) In subsection (1) of this section the reference to this Part of this Act, or to the foregoing provisions of this Part of this Act, shall in relation to an instrument inter vivos made, or a will or codicil coming into operation, after the coming into force of section 18 of the Family Law Reform Act 1987 (but not in relation to instruments inter vivos made or wills or codicils coming into operation earlier) be construed as including references to that section."

4. At the end of section 52 of that Act there shall be added the words "and references (however expressed) to any relationship between two person sshall, unless the contrary intention appears, be construed in accordance with section 1 of the Family Law Reform Act 1987".

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The National Assistance Act 1948 (c.29)

5. In section 42 of the National Assistance Act 1948 (liability to maintain spouse and children), for subsection (2) there shall be substituted the following subsection—

"(2) Any reference in subsection (1) of this section to a person's children shall be construed in accordance with section 1 of the Family Law Reform Act 1987."

6. In section 43 of that Act (recovery of cost of assistance from persons liable for maintenance), for subsection (6) there shall be substituted the following subsection—

"(6) An order under this section shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980."

7. Section 44 of that Act (affiliation orders) shall cease to have effect.

8. In section 56(1) of that Act (legal proceedings), after the words "any sum due under this Act to a local authority" there shall be inserted the words "(other than a sum due under an order made under section 43 of this Act)".

The Marriage Act 1949 (c.76)

9. In the Marriage Act 1949 for the words "an infant", wherever they occur in sections 3, 16 or 28 or in Schedule 2, there shall be substituted the words "a child" and for the words "the infant", wherever they occur in section 3 or in Schedule 2, there shall be substituted the words "the child".

10. In section 78 of that Act—

(a) in subsection (1) for the definition of "infant" there shall be substituted the following definition—

"'child' means a person under the age of eighteen;"; and

(b) after that subsection there shall be inserted the following subsection—

(1A) References in this Act to the parents of a child being or not being married to each other at the time of his birth shall be construed in accordance with section 1 of the Family Law Reform Act 1987."

11. In Schedule 2 to that Act for the heading to Part I there shall be substituted the following heading—

"I. WHERE THE PARENTS OF THE CHILD WERE MARRIED TO EACH OTHER AT THE TIME OF HIS BIRTH"

The Maintenance Orders Act 1950 (c.37)

12. In section 16(2)(a) of the Maintenance Orders Act

1950– Sch. 2

(a) for sub-paragraph (iii) there shall be substituted the following sub-paragraph–

"(iii) section 11B, 11C(1) or 11D of the Guardianship of Minors Act 1971 or section 2(3) or 2(4A) of the Guardianship Act 1973;";

(b) sub-paragraph (iv) shall cease to have effect;

(c) the sub-paragraph (vi) inserted by the Children Act 1975 shall cease to have effect;

(d) in the sub-paragraph (vi) inserted by the Supplementary Benefits Act 1976 the words from "or section 4 of the Affiliation Proceedings Act 1957" to the end shall cease to have effect.

13. In section 18 of that Act for subsection (2) there shall be substituted the following subsection–

"(2) Every maintenance order registered under this Part of this Act in a magistrates' court in England and Wales shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980."

The Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c.65)

14. In section 2(1) of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951, for paragraph (d) of the proviso there shall be substituted the following paragraph–

"(d) an order for alimony, maintenance or other payments which has been made under sections 21 to 33 of the Matrimonial Causes Act 1973 or under section 11B, 11C(1) or 11D of the Guardianship of Minors Act 1971 or section 2(4A) of the Guardianship Act 1973;".

The Births and Deaths Registration Act 1953 (c.20)

15. In section 9(4) of the 1953 Act for "(b) or (c)" there shall be substituted "(b), (c) or (d)".

16. In section 34(2) of that Act for the words "required by law" there shall be substituted the words "required or permitted by law".

The Maintenance Orders Act 1958 (c.39)

17. In section 3 of the Maintenance Orders Act 1958 for subsection (2) there shall be substituted the following subsection–

"(2) Subject to the provisions of the next following subsection, an order registered in a magistrates' court shall be enforceable as a magistrates' court maintenance order within the

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meaning of section 150(1) of the Magistrates' Courts Act 1980."

The Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 (c.63)

18. In section 2 of the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 (restriction of publicity for certain proceedings)-

(a) in subsection (1) the word "and" following paragraph (b) shall cease to have effect and there shall be inserted at the end the following paragraph-

"(e) proceedings under section 56(1) of the Family Law Act 1986 (declarations of parentage);";

(b) in subsection (3) for the words "subsection (1)(a) or (d)" there shall be substituted the words "subsection (1)(d) or (e)".

The Family Law Reform Act 1969 (c.46)

19.-(1) Section 6 of the Family Law Reform Act 1969 (maintenance for wards of court) shall be amended as follows.

(2) At the end of subsection (1) there shall be added the words "and references (however expressed) to any relationship between two persons shall be construed in accordance with section 1 of the Family Law Reform Act 1987".

(3) For subsection (3) there shall be substituted the following subsection-

"(3) Section 12 of the Guardianship of Minors Act 1971 (duration of orders for maintenance) and subsections (4), (5) and (6) of section 12C of that Act (variation and revival of orders for periodical payments) shall apply in relation to an order made under subsection (2) of this section as they apply in relation to an order made by the High Court under section 11B of that Act."

(4) In subsection (5) (which provides that an order under that section shall cease to have effect if the parents of the ward reside together for a period of three months after the making of the order) for the words "three months" there shall be substituted the words "six months".

(5) Subsection (6) (which provides that no order shall be made under that section requiring any person to make any payment towards the maintenance or education of an illegitimate child) shall cease to have effect.

The Children and Young Persons Act 1969 (c.54)

20. In section 70 of the Children and Young Persons Act 1969, after subsection (1A) there shall be inserted the

following subsection—

"(1B) In subsection (1A) of this section the reference to a child whose father and mother were not married to each other at the time of his birth shall be construed in accordance with section 1 of the Family Law Reform Act 1987 and 'actual custody', in relation to a child, means actual possession of his person."

The Administration of Justice Act 1970 (c.31)

21. In Schedule 8 to the Administration of Justice Act 1970—

(a) for paragraph 4(a) there shall be substituted—

"(a) section 11B, 11C or 11D of the Guardianship of Minors Act 1971 or section 2(3) or 2(4A) of the Guardianship Act 1973 (payments for maintenance of persons who are or have been in guardianship);";

(b) paragraph 5 shall cease to have effect.

The Guardianship of Minors Act 1971 (c.3)

22. Without prejudice to any other amendment of the 1971 Act made by this Act, for the words "minor", "minor's" and "minors", wherever occurring in that Act otherwise than in the expression "the Guardianship of Minors Act 1971", there shall be subtituted the words "child" , "child's" and "children" respectively.

23. In section 5(2) of that Act for the words from "notwithstanding" to the end there shall be substituted the words "notwithstanding that parental rights and duties with respect to the child are vested in a local authority or a voluntary organisation by virtue of a resolution under section 3 or 4 of the Child Care Act 1980".

24. In section 11A of that Act for the words "section 9(1), 10(1)(a) or 11(a)", wherever they occur, there shall be substituted the words "section 9 or 10".

25.-(1) Section 12 of that Act shall be amended as follows.

(2) In subsection (1) for the words "an order made under section 9, 10 or 11 of this Act for the making of periodical payments" there shall be substituted the words "an order for periodical payments made by virtue of section 11B(2)(a) or (b) or 11C(3)(a) or (b) of this Act".

(3) In subsection (3) for the words "Any order made under section 9, 10 or 11 of this Act requiring the making of periodical payments" there shall be substituted the words "An order for periodical payments made by virtue of section 11B(2)(a) or 11C(3)(a) of this Act".

26. In section 12A of that Act for the words "section 9(2), 10(1)(b) or 11(b)" there shall be substituted the words "section 11B, 11C or 11D".

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27.-(1) Section 12B of that Act shall be amended as follows.

(2) In subsection (1) for the words "section 9(2), 10(1)(b) and 11(b)" there shall be substituted the words "sections 11B and 11C", the words "in maintaining the minor" shall be omitted and there shall be added at the end the words "being liabilities or expenses incurred in connection with the birth of the child or in maintaining the child".

(3) In subsection (2) for the words "section 9(2), 10(1)(b) or 11(b)" there shall be substituted the words "section 11B, 11C or 11D".

(4) In subsections (3) and (5) for the words "section 9, 10 or 11", in each place where they occur, there shall be substituted the words "section 11B, 11C or 11D".

(5) In subsection (3) after the words "for the making" there shall be inserted the words "or securing" and the words "of a minor" shall cease to have effect.

28.-(1) Section 12C of that Act shall be amended as follows.

(2) In subsections (1) to (3) for the words "section 9, 10 or 11" there shall be substituted the words "section 11B, 11C or 11D" and after the words "for the making" there shall be inserted the words "or securing".

(3) In subsection (4) for the words "section 9, 10 or 11" there shall be substituted the words "section 11B or 11C" and after the words "for the making" there shall be inserted the words "or securing".

(4) For subsection (5) there shall be substituted the following subsections-

"(5) Where an order for the making of periodical payments made under section 11B or 11C of this Act ceases to have effect on the date on which the child attains the age of 16 or at any time after that date but before or on the date on which he attains the age of 18, the child may apply—

(a) in the case of an order made by the High Court or a county court, to the court which made the order, or

(b) in the case of an order made by a magistrates' court, to the High Court or a county court,

for an order for the revival of the first mentioned order.

(6) If on such an application it appears to the High Court or county court that—

(a) the child is, or will be, or if an order were made under this subsection would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not

he is also, or will also be, in gainful employment; or

(b) there are special circumstances which justify the making of an order under this subsection,

the court shall have power by order to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application.

(7) Any order made under section 11B or 11C of this Act by the High Court or a county court which is revived by an order under subsection (5) above may be varied or discharged under section 11B or 11C of this Act, as the case may be, on the application of any person by whom or to whom payments are required to be made under the order.

(8) Any order made under section 11B or 11C of this Act by a magistrates' court which is revived by an order of the High Court or a county court under subsection (5) above–

(a) for the purposes of the variation and discharge of the order, shall be treated as an order of the court by which it was revived and may be varied or discharged by that court on the application of any person by whom or to whom payments are required to be made under the order; and

(b) for the purposes of the enforcement of the order, shall be treated as an order of the magistrates' court by which the order was originally made."

29. After that section there shall be inserted the following section–

"Variation of orders for secured periodical payments after death of parent.

12D.–(1) Where the parent liable to make payments under a secured periodical payments order has died, the persons who may apply for the variation or discharge of the order shall include the personal representatives of the deceased parent, and no application for the variation of the order shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that parent is first taken out.

(2) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (1) of this

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section on the ground that they ought to have taken into account the possibility that the court might permit an application for variation to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the variation of an order in accordance with this section.

(3) Where an application to vary a secured periodical payments order is made after the death of the parent liable to make payments under the order, the circumstances to which the court is required to have regard under section 12C(1) of this Act shall include the changed circumstances resulting from the death of that parent.

(4) In considering for the purposes of subsection (1) of this section the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

(5) In this section 'secured periodical payments order' means an order for secured periodical payments made by virtue of section 11B(2)(b) or 11C(3)(b) of this Act."

30. In section 13 of that Act for subsection (3) there shall be substituted the following subsection-

"(3) Any order for the payment of money made by a magistrates' court under this Act shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980".

31. In section 13A(1) of that Act, for the words "section 9(1), 10(1)(a) or 11(a)" there shall be substituted the words "section 9 or 10".

32. After that section there shall be inserted the following sections-

Direction for settlement of instrument by conveyancing counsel.

13B. Where the High Court or a county court decides to make an order under this Act for the securing of periodical payments or for the transfer or settlement of property, it may direct that the matter be referred to one of the conveyancing counsel of the court for him to settle a proper instrument to be executed by all necessary parties."

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33. Section 14 of that Act and the heading preceding that section shall cease to have effect.

34.-(1) Section 14A of that Act shall be amended as follows.

(2) In subsection (1) for the words "section 9(1)" there shall be substituted the words "section 9".

(3) In subsection (3) for the words "section 9(1), 10(1)(a) or 11(a)" there shall be substituted the words "section 9 or 10".

(4) In subsection (5) for the words "the court has made an order under section 9(1)(a)" there shall be substituted the words "before 1st December 1985 the court has made an order under section 9".

35.-(1) Section 15A of that Act shall be amended as follows.

(2) In subsection (1)-

(a) for the words "section 9(2)(a) and (b)", in both places where they occur, there shall be substituted the words "section 11B(2)(a) and (b)"; and

(b) the words from "notwithstanding" to "custody of the child" shall cease to have effect.

(3) In subsection (2) for the words "section 9(2)", in both places where they occur, there shall be substituted the words "section 11B(2)".

36. In section 16(8) of that Act for the words "section 9(4), 10(2), 11(c), 12B(5) or 12C(5) of this Act or section 3(3) or 4(3A) or (3D)" there shall be substituted the words "section 9(1), 10(1) or (2)(b), 11B(1), 11C(1) or (2)(b), 11D(6), 12B(5) or 12C(2) of this Act or section 3(3) or 4(3A)".

37. In section 20 of that Act for subsection (2) there shall be substituted the following subsections-

"(2) In this Act, unless the context otherwise requires-

'actual custody', as respects a child, means the actual possession of the person of the child;

'child', except where used to express a relationship, means a person who has not attained the age of eighteen;

'legal custody' shall be construed in accordance with Part IV of the Children Act 1975;

'maintenance' includes education.

(2A) In this Act—

(a) references (however expressed) to any relationship between two persons; and

(b) references to the father and mother of a child not being married

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to each other at the time of his birth,

shall be construed in accordance with section 1 of the Family Law Reform Act 1987.

(2B) References in this Act to the parents of an applicant living with each other shall be construed as references to their living with each other in the same household."

The Attachment of Earnings Act 1971 (c.32)

38. In Schedule 1 to the Attachment of Earnings Act 1971–

(a) for paragraph 5(a) there shall be substituted the following paragraph—

"(a) section 11B, 11C or 11D of the Guardianship of Minors Act 1971 or section 2(3) or 2(4A) of the Guardianship Act 1973 (payments for maintenance of persons who are or have been in guardianship);";

(b) paragraph 6 shall cease to have effect.

The Maintenance Orders (Reciprocal Enforcement Act 1972 (c.18)

39. In section 8 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 for subsection (4) there shall be substituted the following subsection–

"(4) An order which by virtue of this section is enforceable by a magistrates' court shall be enforceable as if it were a magistrates' court maintenance order made by that court.

In this subsection "magistrates' court maintenance order" has the same meaning as in section 150(1) of the Magistrates' Courts Act 1980.".

40. In section 27 of that Act–

(a) in subsection (2) for the words from "appointed for the commission area" to the words "as the case may be" there shall be substituted the words "acting for the petty session district";

(b) in subsection (9) the words "section 5(5) of the Affiliation Proceedings Act 1957" shall cease to have effect.

41. In section 28 of that Act after "19(1)(ii)" there shall be inserted "20A".

42. In section 28A(3) of that Act, in paragraph (e) after "19(1)(ii)" there shall be inserted "20A".

43.–(1) Section 30 of that Act shall be amended as follows.

(2) For subsection (1) there shall be substituted the following subsection–

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"(1) Section 12C(5) of the Guardianship of Minors Act 1971 (revival by High Court or county court of orders for periodical payments) shall not apply in relation to an order made on a complaint for an order under section 11B of that Act."

(3) In subsection (2) for the words "to which subsection (1) above applies" there shall be substituted the words "for an order under section 11B of that Act".

(4) In subsection (3) the words "the Affiliation Proceedings Act 1957 or", the words "paragraph (b) of section 2(1) of the said Act of 1957 (time for making complaint) or", the words "(provision to the like effect) as the case may be", the words "three years or" and the words "in the case of a complaint under the said Act of 1924" shall cease to have effect.

(5) In subsection (5) the words "the said Act of 1957 or" and the words "as the case may be" shall cease to have effect.

(6) In subsection (6) the words "or an affiliation order under the said Act of 1957" shall cease to have effect.

44. In section 33 of that Act, for subsection (3) there shall be substituted the following subsection—

"(3) An order which by virtue of subsection (1) above is enforceable by a magistrates' court shall be enforceable as if it were a magistrates' court maintenance order made by that court.

In this subsection "magistrates' court maintenance order" has the same meaning as in section 150(1) of the Magistrates Courts Act 1980."

45.-(1) Section 41 of that Act shall be amended as follows.

(2) Subsection (1) shall cease to have effect.

(3) In subsection (2) for the words "sections 9, 10 or 11" there shall be substituted the words "section 11B or 11C".

(4) In subsection (2A), paragraph (a) shall cease to have effect and for paragraph (b) there shall be substituted the following paragraph—

"(b) an application made under section 11B or 11C of the Guardianship of Minors Act 1971 for the revocation or variation of an order for the periodical payment of money made under the said section 11B or 11C,".

(5) In subsection (2B), paragraph (a) shall cease to have effect and in paragraph (b) for the words "section 9, 10 or 11" there shall be substituted the words "section 11B or 11C".

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The Matrimonial Causes Act 1973 (c.18)

46. In section 27 of the Matrimonial Causes Act 1973 for subsection (6B) there shall be substituted the following subsection-

"(6B) Where a periodical payments order made in favour of a child under this section ceases to have effect on the date on which the child attains the age of sixteen or at any time after that date but before or on the date on which he attains the age of eighteen, then if, on an application made to the court for an order under this subsection, it appears to the court that-

(a) the child is, or will be, or if an order were made under this subsection would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or

(b) there are special circumstances which justify the making of an order under this subsection,

the court shall have power by order to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application, and to exercise its power under section 31 of this Act in relation to any order so revived."

The Guardianship Act 1973 (c.29)

47. Without prejudice to any other amendment of Part I of the 1973 Act made by this Act, for the words "minor" and "minors", wherever occurring in that Part otherwise than in the expressions" the Guardianship of Minors Act 1971" and "the Guardianship of Minors Acts 1971 and 1973", there shall be substituted the words "child" and "children" respectively.

48.-(1) Section 2 of that Act shall be amended as follows.

(2) For subsection (2) there shall be substituted the following subsection-

"(2) Where an application is made under section 9 of the Guardianship of Minors Act 1971 for the legal custody of a child, then subject to sections 3 and 4 below-

(a) if by virtue of the making of, or refusal to make, an order on that application the actual custody of the child is given to, or retained by, a parent of the child, but it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person,

the court may make an order that the child shall be under the supervision of a specified local authority or under the supervision of a probation officer;

(b) if it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parents, the court may commit the care of the child to a specified local authority."

(3) For subsections (4) and (5) there shall be substituted the following subsections—

"(4) Subject to the provisions of this section, where an application is made under section 9 of the Guardianship of Minors Act 1971 the court, at any time before it makes a final order or dismisses the application, may, if by reason of special circumstances the court thinks it proper, make an interim order containing any such provision regarding the legal custody of and right of access to the child as the court has power to make under that section.

(4A) Subject to the provisions of this section, where an application is made under section 11B of the Guardianship of Minors Act 1971, the court, at any time before it makes a final order or dismisses the application, may make an interim order requiring either parent to make to the other or to the child such periodical payments towards the maintenance of the child as the court thinks fit.

(5) Where under section 16(4) of the Guardianship of Minors Act 1971 the court refuses to make an order on an application under section 9 or 11B of that Act on the ground that the matter is one that would more conveniently be dealt with by the High Court, the court shall have power—

(a) in the case of an application under section 9 of that Act, to make an order under subsection (4) above,

(b) in the case of an application under section 11B of that Act, to make an order under subsection (4A) above".

(4) In subsection (5B) for the words "section 9" there shall be substituted the words "section 11B".

(5) For subsection (5E) there shall be substituted the following subsection—

"(5E) On an application under section 9 or 11B of the Guardianship of Minors Act 1971 the court shall not have power to make more than

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one interim order under this section with respect to that application, but without prejudice to the powers of the court under this section on any further such application.".

(6) Subsection (6) shall cease to have effect.

49. In section 4 of that Act-

(a) in subsection (3) after the words "section 9" there shall be inserted the words "or 11B"; and

(b) subsection (3D) shall cease to have effect.

50.-(1) Section 5 of that Act shall be amended as follows.

(2) For subsections (1) and (2) there shall be substituted the following subsections-

"(1) There shall be no appeal under section 16 of the Guardianship of Minors Act 1971 from an interim order under subsection (4A) of section 2 above.

(2) Section 9 of the Guardianship of Minors Act 1971 shall apply in relation to an interim order made under this Act on an application under that section as if the interim order had been made under that section.

(2A) Section 13 of the Guardianship of Minors Act 1971 shall apply in relation to an interim order made under this Act as if the interim order had been made under that Act.".

51. In section 5A of that Act for subsections (1) and (2) there shall be substituted the following subsections-

"(1) Where any of the following orders is made, that is to say-

(a) an order under section 9 of the Guardianship of Minors Act 1971 which gives the right to the actual custody of a child to one of the parents of the child,

(b) an order under section 11B of that Act which requires periodical payments to be made or secured to a parent of the child,

(c) an interim order under section 2(4) above which gives the right to the actual custody of a child to a parent of the child,

(d) an interim order under section 2(4A) above which requires periodical payments to be made to a parent of the child,

that order shall be enforceable notwithstanding that the parents of the child are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently live

with each other; but that order shall cease to have effect if after that date the parents of the child marry each other or live with each other for a period exceeding six months.

(2) Where any of the following orders is made, that is to say-

(a) an order under section 11B of the Guardianship of Minors Act 1971 which requires periodical payments to be made or secured to a child,

(b) an order under section 2(2)(i), 2(2)(ii) or 2(3) above,

(c) an interim order under section 2(4A) requiring periodical payments to be made to a child,

then, unless the court otherwise directs, that order shall be enforceable notwithstanding that the parents of the child are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently live with each other.

(2A) Where an order is made under section 11D of the Guardianship of Minors Act 1971 requiring periodical payments to be made to a person who has attained the age of eighteen, then unless the court otherwise directs, that order shall be enforceable notwithstanding that the parents of that person, although they are not living with each other at the date of the order, subsequently live with each other.".

52. Before section 9 of that Act there shall be inserted the following section-

"Interpretation of Part I.

8A.—(1) In this Part of this Act 'child', except where used to express a relationship, means a person who has not attained the age of eighteen.

(2) In this Part of this Act—

(a) references (however expressed) to any relationship between two persons; and

(b) references to the father and mother of a child not being married to each other at the time of his birth,

shall be construed in accordance with section 1 of the Family Law Reform Act 1987."

The Social Security Act 1975 (c.14)

53. In section 25(1) of the Social Security Act 1975 there

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(c) if the woman and her late husband were residing togehter immediately before his death, the woman is pregnant as the result of being artificially inseminated with the semen of some pwerson other than than her husband."

The Children Act 1975 (c.72)

54. In section 33 of the Children Act 1975, after subsection (9) there shall be inserted the following subsection—

"(9A) In this Part of this Act references (however expressed) to any relationship between two persons shall be construed in accordance with section 1 of the Family Law Reform Act 1987."

55.—(1) Section 34 of that Act shall be amended as follows.

(2) Subsection (3) shall cease to have effect.

(3) In subsection (5) for the words "(5A), (5B), (5C), (5D), (5E) and (6) there shall be substituted the words "(4A)", (5A), (5B), (5C), (5D) and (5E)" and for the words "section 2(2)(b) and (4)(a)" there shall be substituted the words "section 2(2)(b) and (4A)".

56. In section 35 of that Act, for subsection (10) there shall be substituted the following subsections-

"(10) Where an order under section 34(1)(b) ceases to have effect on the date on which the child attains the age of 16 or at any time after that date but before or on the date on which he attains the age of 18, the child may apply to an authorised court, other than a magistrates' court, for an order for the revival of that order, and if, on such an application, it appears to the court that-

(a) the child is, or will be, or if an order were made under this subsection would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or

(b) there are special circumstances which justify the making of an order under this subsection,

the court shall have power by order to revive the order made under section 34(1)(b) from such date as the court may specify, not being earlier than the date of the making of the application and to vary or revoke under this section any order so revived.

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(10A) Any order made by a magistrates' court under section 34(1)(b) which is revived by an order under subsection (10) shall for the purposes of the enforcement of the order be treated as an order made by the magistrates' court by which the order was originally made."

57. In section 36 of that Act, subsection (5A) shall cease to have effect.

58. In section 37(3) of that Act, for the words "section 9 (orders for custody and maintenance)" there shall be substituted the words "section 9 (orders for custody)".

59. In section 43 of that Act, for subsection (3) there shall be substituted the following subsection-

"(3) An order for the payment of money made by a magistrates' court under section 34 shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates" Courts Act 1980."

60. Section 45 of that Act (affiliation order on application of custodian) shall cease to have effect.

The Adoption Act 1976 (c.36)

61. At the end of section 18 of the Adoption Act 1976 there shall be added the following subsection—

"(8) In subsection (7) the reference to a child whose father and mother were not married to each other at the time of his birth shall be construed in accordance with section 1 of the Family Law Reform Act 1987."

62. In section 72 of that Act, after subsection (1) there shall be inserted the following subsection—

"(8) In the definition of 'guardian' in subsection (1) the reference to a child whose father and mother were not married to each other at the time of his birth shall be construed in accordance with section 1 of the Family Law Reform Act 1987."

The Domestic Proceedings and Magistrates' Courts Act 1978 (c.22)

63. After section 20 of the Domestic Proceedings and Magistrates' Courts Act 1978 there shall be inserted the following section-

"Revival of orders for periodical payments.

20A.-(1) Where an order made by a magistrates' court under this Part of this Act for the making of periodical payments to or in respect of a child (other than an interim maintenance order) ceases to have effect on the date on which the child attains the age of 16 or at any time after that date but before or on the date on which he attains the age of 18, the

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child may apply to the High Court or a county court for an order for the revival of the order of the magistrates' court, and if, on such an application, it appears to the High Court or county court that-

(a) the child is, or will be, or if an order were made under this subsection would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or

(b) there are special circumstances which justify the making of an order under this subsection,

the court shall have power by order to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application.

(2) Where an order made by a magistrates' court is revived by an order of the High Court or a county court under subsection (1) above, then-

(a) for the purposes of the variation and discharge of the revived order, that order shall be treated as an order of the court by which it was revived and may be varied or discharged by that court on the application of any person by whom or to whom payments are required to be made under the order, and

(b) for the purposes of the enforcement of the revived order, that order shall be treated as an order of the magistrates' court by which the order was originally made."

64. In section 32 of that Act for subsection (1) there shall be substituted the following subsection-

"(1) An order for the payment of money made by a magistrates' court under this Part of this Act shall be enforceable as a magistrates' court maintenance order."

65. In section 88(1) of that Act after the definition of "local authority" there shall be inserted the following definition-

" 'magistrates' court maintenance order' has the same meaning as in section 150(1) of the Magistrates' Courts Act 1980".

66. In Schedule 1 to that Act-

(a) after paragraph 3 there shall be inserted the

following paragraph—

"3A. Any order for the payment of money in force under the Matrimonial Proceedings (Magistrates' Courts) Act 1960 (including any such order made under that Act by virtue of paragraph 1 above) shall be enforceable as a magistrates' court maintenance order."

(b) in paragraph 4 for the words "paragraph 2 or 3" there shall be substituted the words "paragraph 2, 3 or 3A".

The Interpretation Act 1978 (c.30)

67. At the end of Schedule 1 to the Interpretation Act 1978, there shall be added the following heading and entry—

"Construction of certain references to relationships

In relation to England and Wales—

(a) references (however expressed) to any relationship between two persons;

(b) references to a person whose father and mother were or were not married to each other at the time of his birth; and

(c) references cognate to references falling within paragraph (b) above,

shall be construed in accordance with section 1 of the Family Law Reform Act 1987. [The date on which that section comes into force]".

68. In paragraph 4 of Schedule 2 to that Act, the words "earlier than the commencement of this Act" shall cease to have effect and after the word "specified", wherever it occurs, there shall be inserted the words "or described".

The Child Care Act 1980 (c.5)

69. In section 47 of that Act, for subsection (4) there shall be substituted the following subsections—

"(4) A contribution order shall be enforceable as a magistrates' courts maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980, except that any powers conferred on a magistrates' court by that Act shall as respects a contribution order be exercisable, and exercisable only, by a magistrates' court appointed for the commission area where the contributor is for the time being residing.

(5) Where a contribution order is made requiring the father of a child whose parents were not married to each other at the time of his birth to make contributions in respect of the child, the father shall keep the local authority to whom the contributions are required to be made informed of his address; and if he fails to do so, he shall be guilty of an offence and

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liable on summary conviction to a fine not exceeding level 1 on the standard scale."

70. Sections 49 and 50 of that Act (affiliation orders) shall cease to have effect.

71. In section 55 of that Act-

(a) subsection (3) shall cease to have effect; and

(b) in subsection (5) the words from "and any jurisdiction conferred by this section in affiliation proceedings" to the end of the subsection shall cease to have effect.

72. In section 86 of that Act for paragraphs (a) and (b) there shall be substituted the words "of an order made by a court under section 47 or 48 of this Act".

73.—(1) Section 87 of that Act shall be amended as follows.

(2) In subsection (1), in the definition of "relative" the words from "and includes" onwards shall cease to have effect.

(3) After subsection (1A) there shall be inserted the following subsection—

"(1B) The following, namely—

(a) in this Act except Part I and sections 13, 24, 64 and 65 references (however expressed) to any relationship between two persons; and

(b) in subsection (1A) the reference to a child whose father and mother were not married to each other at the time of his birth,

shall be construed in accordance with section 1 of the Family Law Reform Act 1987."

The Magistrates' Courts Act 1980 (c.43)

74. In section 58(2)(a) of the Magistrates' Courts Act 1980 for the words "an affiliation order or order enforceable as an affiliation order" there shall be substituted the words "a magistrates' court maintenance order".

75. In section 64 of that Act for subsection (4) there shall be substituted the following subsection-

"(4) Any costs awarded on a complaint for a maintenance order, or for the enforcement, variation, revocation, discharge or revival of such an order, against the person liable to make payments under the order shall be enforceable as a sum ordered to be paid by a magistrates' court maintenance order."

76. In section 80(1) of that Act for the words "an affiliation order or an order enforceable as an affiliation order" there shall be substituted the words "a magistrates' court maintenance order".

77. In section 93(1) of that Act for the words "an affiliation order or order enforceable as an affiliation order' there shall be substituted the words "a magistrates' court maintenance order".

78. In section 94 of that Act for the words "an affiliation order or order enforceable as an affiliation order" there shall be substituted the words "a magistrates' court maintenance order".

78. In section 95 of that Act for the words "an affiliation order or an order enforceable as an affiliation order" there shall be substituted the words "a magistrates' court maintenance order".

79. In section 100 of that Act for paragraph (b) there shall be substituted the following paragraph-

"(b) on any application made by or against that person for the making of a magistrates' courts maintenance order, or for the variation, revocation, discharge or revival of such an order".

80. In section 150(1) of that Act-

(a) the definition of "affiliation order" shall cease to have effect;

(b) after the definition of "London Commission area" there shall be inserted-

"magistrates' court maintenance order" means a maintenance order enforceable by a magistrates' court;

"maintenance order" means any order specified in Schedule 8 to the Administration of Justice Act 1970 and includes such an order which has been discharged, if any arrears are recoverable thereunder;".

The Civil Jurisdiction and Judgments Act 1982 (c.27)

81.—(1) Section 5 of the Civil Jurisdiction and Judgments Act 1982 shall be amended as follows.

(2) After subsection (5) there shall be inserted the following subsection-

"(5A) A maintenance order which by virtue of this section is enforceable by a magistrates' court in England and Wales shall be enforceable in the same manner as a magistrates' court maintenance order made by that court.

In this subsection 'magistrates' court maintenance order' has the same meaning as in section 150(1) of the Magistrates' Courts Act 1980."

(3) In subsection (6) the words "England and Wales or" shall cease to have effect.

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The Social Security Act 1986 (c.50)

82. In section 24 of the Social Security Act 1986 (recovery of expenditure on supplementary benefits from persons liable for maintenance), subsections (2) and (3) shall cease to have effect and for subsection (7) there shall be substituted the following subsection-

"(7) An order under this section shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980."

83. Section 25 of that Act (affiliation orders) shall cease to have effect.

84. In section 26 of that Act, for subsection (4) there shall be substituted the following subsection-

"(4) Any reference in subsection (3) above to a person's children shall be construed in accordance with section 1 of the Family Law Reform Act 1987."

Section 33(2).

SCHEDULE 3

TRANSITIONAL PROVISIONS AND SAVINGS

Applications pending under amended or repealed enactments

1. This Act (including the repeals and amendments made by it) shall not have effect in relation to any application made under any enactment repealed or amended by this Act if that application is pending at the time when the provision of this Act which repeals or amends that enactment comes into force.

References to provisions of Adoption Act 1976

2. In relation to any time before the coming into force of section 38 of the Adoption Act 1976, the reference in section 1(2) of this Act to Part IV of that Act shall be construed as a reference to Schedule 1 to the Children Act 1975.

1976 c.36.

1975 c.72.

3. In relation to any time before the coming into force of section 18 of the Adoption Act 1976, any reference—

(a) in section 7(1) of paragraph 60 of Schedule 2 to this Act; or

(b) in section 9(2) or 10(3) of the 1971 Act as substituted by this Act,

to or to subsection (7) of the said section 18 shall be construed as a reference to or to subsection (8) of section 14 of the Children Act 1975.

4. In relation to any time before the coming into force of section 72(1) of the Adoption Act 1976, the reference in section 7(2) of this Act to that section shall be construed as a reference to section 107(1) of the Children Act 1975.

5. In relation to any time before the coming into force of section 42 of the Adoption Act 1976, the reference in section 19 of this Act to that section shall be construed as a reference to paragraph 1 of Schedule 1 to the Children Act 1975.

References to provisions of the Adoption (Scotland) Act 1978

6. In relation to any time before the coming into force of section 18 of the Adoption (Scotland) Act 1978, any reference in section 9(2) or 10(3) of the 1971 Act as substituted by this Act to the said section 18 shall be construed as a reference to section 14 of the Children Act 1975.

Affiliation orders

7.-(1) Any affiliation order made under the Affiliation Proceedings Act 1957 which is in force immediately before the coming into force of section 17 of this Act shall not be affected by the repeal by this Act of that Act, and the provisions of that Act of 1957 (and the provisions of the Magistrates' Courts Act 1980 as they have effect immediately before the coming into force of any of the amendments made to that Act of 1980 by Schedule 3 to this Act) shall, after the coming into force of section 17 of this Act, continue to apply in relation to such an order and to an affiliation order made by virtue of paragraph 1 above. 1957 c.55. 1980 c.3.

(2) Any reference in this paragraph to an affiliation order made under the Affiliation Proceedings Act 1957 includes a reference to—

(a) an affiliation order made, or having effect as if made, by virtue of section 44 of the National Assistance Act 1948, section 49 or 50 of the Child Care Act 1980 or section 25 of the Social Security Act 1986; and 1948 c.24. 1986 c.50.

(b) any order made in relation to such an order;

and the reference to the provisions of that Act of 1957 shall be construed accordingly.

8. Where—

(a) an application is made to the High Court or a county court for an order under section 11B of the 1971 Act in respect of a child whose parents were not married to each other at the time of his birth; and

(b) an affiliation order providing for periodical payments is in force in respect of the child by virtue of this Schedule,

the court may, if it thinks fit, direct that the affiliation order shall cease to have effect on such date as may be specified in the direction.

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Property rights

1969 c.46.

9. The repeal by this Act of section 14 of the Family Law Reform Act 1969 shall not affect any rights arising under the intestacy of a person dying before the coming into force of the repeal.

1925 c.19.

10. The repeal by this Act of section 15 of the Family Law Reform Act 1969 shall not affect, or affect the operation of section 33 of the Trustee Act 1925 in relation to-

(a) any disposition inter vivos made before the date on which the repeal comes into force; or

(b) any disposition by will or codicil executed before that date.

11. The repeal by this Act of section 17 of the Family Law Reform Act 1969 shall not affect the liability of trustees or personal representatives in respect of any conveyance or distribution made before the coming into force of the repeal.

Registration of births

12. Where-

(a) a child whose parents were not married to each other at the time of his birth has been born in England and Wales before the date on which section 24 of this Act comes into force;

(b) the birth has not been registered under the 1953 Act before that date; and

(c) an order has been made under section 4 of the Affiliation Proceedings Act 1957 naming any person as the putative father of the child,

the mother of the child, on production of a certified copy of the order, may request the registrar to enter the name of that person as the father of the child under section 10 of the 1953 Act as if the order made under the said section 4 were an order under section 11B of the 1971 Act.

13. Where-

(a) the birth of a child whose parents were not married to each other at the time of his birth has been registered under the 1953 Act before the date on which section 25 of this Act comes into force;

(b) no person has been registered as the father of the child; and

1957 c.55.

(c) an order has been made under section 4 of the Affiliation Proceedings Act 1957 naming any person as the father of the child,

the mother of the child, on production of a certified copy of the order, may request the registrar to re-register the birth so as to show as the father of the child the person named in the order.

SCHEDULE 4

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Section 35(4).

REPEALS

Chapter	Short title	Extent of repeal
11 & 12 Geo.6 c.29.	The National Assistance Act 1948.	Section 42(2). Section 44.
14 Geo.6 c.37.	The Maintenance Orders Act 1950.	Section 3. In section 16(2)(a)– (a) paragraph (iv); (b) the paragraph (vi) inserted by the Children Act 1975; (c) in the paragraph (vi) inserted by the Supplementary Benefits Act 1976 the words from "or section 4 of the Affiliation Proceedings Act 1957" to the end.
3 & 4 Eliz.2 c.18.	The Army Act 1955.	In section 150(5) the words from "references to a sum ordered to be paid" to the end.
3 & 4 Eliz.2 c.19.	The Air Force Act 1955.	In section 150(5) the words from "references to a sum ordered to be paid" to the end.
5 & 6 Eliz.2 c.53.	The Naval Discipline Act 1957.	In section 101(5) the words "and includes an affiliation order within the meaning of the Affiliation Orders Act 1914".
5 & 6 Eliz.2 c.55.	The Affiliation Proceedings Act 1957.	The whole Act.
6 & 7 Eliz.2 c.39.	The Maintenance Orders Act 1958.	In section 21(1) the words "affiliation order".

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Chapter	Short title	Extent of repeal
7 & 8 Eliz.2 c.73.	The Legitimacy Act 1959.	The whole Act.
1968 c.63.	The Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968.	In section 2(1), the word "and" following paragraph (c).
1969 c.46.	The Family Law Reform Act 1969.	Sections 14 and 15. Section 17. Section 27.
1970 c.31.	The Administration of Justice Act 1970.	In Schedule 8, paragraph 5.
1971 c.3.	The Guardianship of Minors Act 1971.	In section 12B(3), the words "of a minor". Section 14 and the heading preceding that section.
1971 c.32.	The Attachment of Earnings Act 1971.	In Schedule 1, paragraph 6.
1972 c.18.	The Maintenance Orders (Reciprocal Enforcement) Act 1972.	Section 3(3). In section 27(9), the words "section 5(5) of the Affiliation Proceedings Act 1957". In section 30– (a) in subsection (3) the words "the Affiliation Proceedings Act 1957 or", the words "paragraph (b) of section 2(1) of the said Act of 1957 (time for making complaint) or" the words "(provision to the like effect) as the case may be", the words "three years or" and the words "in the case of a complaint under the said Act of 1924"; (b) in subsection (5) the words "the said

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Chapter	Short title	Extent of repeal
		Act of 1957" and the words "as the case may be"; (c) in subsection (6) the words "or an affiliation order under the said Act of 1957".
		In section 41– (a) subsection (1); (b) in subsection (2A), paragraph (a); (c) in subsection (2B), paragraph (a).
1972 c.49.	The Affiliation Proceedings (Amendment) Act 1972.	The whole Act.
1973 c.29.	The Guardianship Act 1973.	Section 2(6). Section 4(3D).
1974 c.4.	The Legal Aid Act 1974.	In Schedule 1, paragraph 2 of Part I.
1975 c.72.	The Children Act 1975.	Section 34(3). Section 36(5A). Section 45. In section 85(2) the words "(which relate to separation agreements between husband and wife)". Section 93(1) and (2). In Schedule 3, paragraphs 7, 9, 14 and 75(1).
1976 c.36.	The Adoption Act 1976.	In Schedule 3, paragraph 16.
1978 c.22.	The Domestic Proceedings and Magistrates' Courts Act 1978.	In section 20, subsections (10) and (13). In section 36(1), paragraph (c). Section 38(2). Section 41. In section 45, subsections (2) and (3). In Schedule 2, paragraphs 30 and 44.

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Chapter	Short title	Extent of repeal
1980 c.5.	The Child Care Act 1980.	Sections 49 and 50. In section 52(1), paragraph (b). In section 54(1) and (2) the words "49, 50". In section 55, subsection (3) and, in subsection (5), the words from "and any jurisdiction conferred by this section in affiliation proceedings" to the end. In section 87(1), in the definition of "relative", the words from "and includes" to the end. In Schedule 2, paragraphs 4 and 5 and in paragraph 7 the words "49, 50". In Schedule 5, paragraphs 6 to 8.
1980 c.43.	The Magistrates' Courts Act 1980.	In section 59(2) the words "an affiliation order". In section 65(1)- (a) in paragraph (b) the words "or section 44"; (b) paragraph (d); (c) in paragraph (i) the words "or section 19"; (d) in paragraph (k) the words "49 or 50". Section 92(3). In section 150(1), the definition of "affiliation order".
1981 c.54.	The Supreme Court Act 1981.	In Schedule 1, in paragraph 3(b)(iii), the words "affiliation or".
1982 c.24.	The Social Security and Housing Benefits Act 1982.	In Schedule 4, paragraph 1.

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Chapter	Short title	Extent of repeal
1986 c.50.	The Social Security Act 1986.	In section 24, subsections (2) and (3). Section 25.

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10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

"MINISTER FOR CHILDREN/MINISTER FOR THE FAMILY"

I have shown the Prime Minister your minute of 8 April about the possible creation of a "Minister for Children" or "Minister for the Family".

The Prime Minister was very grateful for this and has noted the information you provided.

I will of course be in touch with you again if the Prime Minister wishes to consider this matter further.

N. L. WICKS

10 April 1986

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Prime Minister

I processed this note because you had mentioned the possibility once to me. The idea does not seem to have much operational benefit and to be only superficially attractive in presentational terms. N.L.W 7.4.

Ref.A086/1061

MR WICKS

Possible "Minister for Children"/"Minister for the Family"

You asked for a short note on the possible creation of a "Minister for Children" or "Minister for the Family", following the Prime Minister's meeting with Mr Geoffrey Dickens MP on 30 January.

"Minister for Children"

2. Responsibilities relating to children currently rest with a number of different Departments, notably the Department of Health and Social Security and the Department of Education and Science but also including the Home Office (eg guardianship proceedings), the Lord Chancellor's Department (family law including children), the Department of the Environment (since 1983 responsible for co-ordinating Government policy on childrens' play) and the Department of Employment and the Health and Saftey Executive (aspects of child employment). This allocation between Departments reflects the close relationship between particular policies relating to children and those relating to the population more generally.

3. An attempt to split off all responsibilities relating to children and concentrate them in a single Department would raise awkward questions of definition and would not avoid the need for close co-ordination between child related and more general policies on particular topics. The most that would be practical would seem to be an interdepartmental co-ordinating role fulfilled by a Minister located within an existing Department but bearing a courtesy title of "Minister for Children".

4. A remit as wide as "Minister for Children" could face the Minister concerned with the task of co-ordinating most DES responsibilities; present concerns might be better addressed by a "Minister for Child Welfare" whose interest in education would be confined to schools' involvement in the handling of welfare cases. Such a Minister's role might, given current concerns for child care, focus less on co-ordinating policy than on seeking to secure co-ordinated action on the ground. A difficulty would be that many of those with operational responsibility on the ground are outside central Government: local authorities, voluntary organisations, the police etc. The task for a co-ordinating Minister might be to negotiate guidelines with these bodies aimed at ensuring co-ordinated responses to individual cases.

"Minister for the Family"

5. Somewhat similar considerations apply to the possibility of creating a "Minister for the Family". Successive administrations have concluded that such an appointment would not be an effective or efficient way of implementing Government policies affecting families. The argument is that the range of policies concerned is so wide that a co-ordinating Minister's responsibilities would inevitably cut across and complicate existing Departmental responsibilities, and would overlap in a confusing way with more general arrangements for interdepartmental co-ordination. In 1984 Mr Conal Gregory MP suggested that a "Minister for the Family" should be appointed; the Prime Minister's reply expressed her belief that there would be no gain from such an appointment and that the general arrangements for co-ordinating Government policies related to family life were adequate.

RCA

ROBERT ARMSTRONG

8 April 1986

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Prime Minister (2)

In my view this is too complacent. In 1981 there were 916,000 one parent families, compared with 367,000 in 1961. 30 per cent of children in Lambeth are in one parent families. Given the relationship between one parent families and difficulties at school and juvenile crime, this is very worrying. AT 7/6 I agree (4)

PRIME MINISTER 6 June 1985

AT 7/6

A CONSERVATIVE SOCIETY

Media comment on events like the Brussels riot leadsus to believe Britain is suffering from social instability. The traditional family is supposed to be disappearing. But does the evidence bear this out?

Households

30% of households now consist of a married couple with one or more dependent children, as against 38% in 1961. 24% of households now consist of one person, as against 11% in 1961. And this is taken to show that the traditional nuclear family is declining. But it is misleading:

i. If you look at numbers of people rather than numbers of households, the picture is very different. About 78% of people in private households in 1983 lived in families headed by a married couple, virtually unchanged from 82% in 1961.

ii. Despite the increase in single-parent families, the normal nuclear family is still an important phase in most people's lives. But we marry later and live longer, so it is more likely that in other stages of our lives we will be living alone. In particular, the rise in single households largely reflects the increase in old people. 16% of households now consist of one person over retirement age, compared with 7% in 1961.

Perhaps what matters more is the changing pattern of power and authority within the nuclear family, rather than the dwindling of family units.

Marriage and Divorce

Again, there are widespread myths about the decline of marriage. The most frequently quoted statistic is that one in three marriages will end in divorce. But again the underlying picture is much more complicated.

In 1972, one in three women marrying for the first time was a teenager; in 1982, it was a little over one in five. Spouses who marry in their teens are almost twice as likely to divorce as those who marry between the ages of 20 and 24. And there are fewer marriages where the bride is pregnant (greatly increasing the likelihood of divorce). So these pressures which can lead to divorce are weakening.

Cohabitation has increased, yet is often a prelude to marriage. Of women marrying for the first time in 1979, about 19% said they had lived with their husband beforehand - as against 2% for marriages between 1961 and 1965. But fewer than 7 in 1,000 of all women between 18 and 49 are living and bearing children in permanent unions outside marriage.

Property Ownership.

The table below breaks down the percentage of owner-occupiers by age of head of household:

Age	Owner-Occupiers (%)
60-64	50
45-59	59
30-44	67

So there is still scope for major increases in total owner-occupation as people move through the age bands.

Conclusion

An article in New Society, of all places, sums up the message:

> "Most adults still marry and have children. Most children are reared by their natural parents. Most people live in a household headed by a married couple. Most marriages continue until parted by death. No great change seems currently in prospect."

There is comfort here, and material which can be drawn on for speeches.

David Willetts

DAVID WILLETTS

(Sources: Social Trends, Household Survey, New Society)

HOUSE OF LORDS,
SW1A 0PW

30 May 1985

My dear Willie.

Family and Matrimonial (Miscellaneous Provisions) Bill

In his letter of 14th May Leon Brittan agreed in principle with the family legislation proposed in my letter of 23rd April, but he raised several points of detail in connection with the three Law Commission Reports concerned.

I agree with Leon Brittan's proposed consequential amendment to section 1 of the Child Abduction Act 1984 to bring the definition of "person connected" in this section into line with that in section 6 of the 1984 Act: Scottish custody orders would then have the same effect under section 1 as English orders.

The matters of detail on the Reports on Recognition of Foreign Nullity Decrees and on Declarations in Family Matters which were mentioned by Leon Brittan in paragraph 5 of his letter will be settled by our officials before legislation is introduced.

I share Leon Brittan's hope that the authorities in the Channel Islands and the Isle of Man will agree to the extension of the Bill to their Islands, so ensuring further harmonisation

The Right Honourable
The Viscount Whitelaw, CH., MC.,
Lord President of the Council,
Privy Council Office,
Whitehall, SW1A 2AT.

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of the rules of child custody jurisdiction and the enforcement of custody orders.

I am copying this letter to the other members of H Committee, to the Lord Advocate and to Sir Robert Armstrong.

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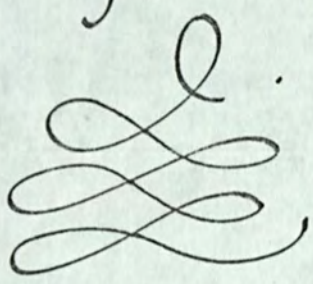

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Ref. No: C(84)2
Date: 7.6.84

Matrimonial and Family Proceedings Bill

Supplementary Brief for the Debate on 13th June 1984.

This should be used in conjunction with the Brief for the Second Reading (Ref No C(84)1R).

Conservative Research Department,
32 Smith Square,
London SW1
Tel. 222 9000

Enquiries on this brief to:

Alistair Cooke Esq

INTRODUCTION

1. This Bill was considered by a Special Standing Committee. Witnesses selected by the Committee itself gave written and oral evidence. It is printed in the Hansard reports of the Second, Third and Fourth sittings. Attention is drawn in particular to the evidence of Sir John Arnold, (President of the Family Division of the High Court), Lord Scarman (a Law Lord), Mr Justice Gibson and Professor Cretney (Law Commissioners) and Mr Joseph Jackson, QC (Chairman of the Family Law Bar Association and Editor of 'Rayden on Divorce').

2. By far the greater part of the Committee's sittings was of taken up in considering Parts I and II. Part I amends the law relating to how soon proceedings for divorce may be begun after a marriage has taken place. Part II changes the emphasis of the guidelines given to the judges (by Section 25 of the Matrimonial Causes Act 1973) regarding their power to award "financial relief" after divorce.

3. The evidence of the witnesses related almost exclusively to these Parts. Consequently this Brief, which supplements the Brief supplied on Second Reading (C(84)1R), deals with Parts I and II of the Bill alone. (The Bill passed through committee without amendment, and without Government commitment to make any amendments of substance).

4. Part I implements the recommendations of the Law Commission in its Report No 116. It deals with the problem created by the present rule that a divorce petition cannot be presented within the first 3 years of marriage unless the court gives leave on grounds of "exceptional depravity" on the part of the respondent or "exceptional hardship" suffered by the petitioner. These criteria encourage allegations which greatly embitter the divorce proceedings, and also the negotiation and settlement of such matters as maintenance, custody, and access; and these consequences may be particularly harmful to children. There was no dispute as to this in the evidence given to the committee, which reflects the Law Commission's findings.

5. The present rule has obtained only since 1937. Before that there had been no time restriction at all ever since Parliament in 1857 transferred the divorce jurisdiction from the ecclesiastical to the civil courts. (In Scotland where the grounds of divorce are the same as in England and Wales, there is no time restriction and there never has been). The courts have long recognised that some of the most urgent circumstances giving rise to irrevocable breakdown of a marriage can arise at an early point in the marriage. In practice they give leave in about 1,900 cases a year - only about 5 per cent of applicants are refused.

6. As to the harmful affects of the discretionary criteria the following passage from the evidence is relevant:

> "Solicitor General: It is said that in practice that has a bad effect on the relationship between the spouses and runs against the principle that a divorce should be effected with a minimum of bitterness, stress and humiliation. From your experience as a practitioner, what do you have to say about that? Does it extend to the negotiations on ancillary matters such as maintenance and access?

"Mr Jackson: I agree that such allegations are bound to embitter matters. I should go further. A practitioner sees allegations in ordinary behaviour petitions raising difficulties. It is difficult - I shall perhaps come back to this later - to get out of the recipient's mind his or her bitterness on finding such a petition on the breakfast table. So an allegation of exceptional depravity must be extremely difficult to eradicate. The sooner that one gets rid of that, the better. Judges have been trying to get rid of it by accepting a low threshold of "exceptional" and "depravity". In fact, it is said that if one presents one's application for leave to petition within three years, one automatically gets it in some parts of the country, although I do not know whether that it is true.

"The Solicitor General: Paragraph 2.5 of the Law Commission's report states:

> "It appears that the distasteful process of applying for leave, coupled with its unpredictable outcome, is such that practitioners sometimes advise clients against it, suggesting either that they seek some other less distressing form of relief or simply wait until the three years have expired, when the more neutral fact of separation can perhaps be relied upon." Does your experience bear that out?

"Mr Jackson: Yes. When I drafted applications for leave to present - I had a fair amount of experience of it - skill in drafting was an overriding factor. I found no difficulty in getting leave to present, and from what I have heard, I do not think that there is difficulty. The whole thing now has a lack of reality about it. Since Bowman, the courts have not been applying the law strictly and, in my respectful submission, nor should they be required to." (Fourth Sitting, Col. 282).

7. The Law Commission concluded that an absolute 1 year bar achieved the fairest possible balance between upholding the institution of marriage and relief for the unfortunate minority who find that their marriage has broken down irretrievably at a very early age.

They expressed their reasoning as follows:

"We believe that this would be a long enough period to assert the public interest in restricting precipitate divorce and also to have some influence in restraining impulsive or ill-considered proceedings prompted by initial problems or disappointment. Equally, we believe that one year would not be so a long period as to be unendurable for people in genuine situations of marital breakdown.

"We are, however, conscious that a considerable number of those who wrote to us favoured the total abolition of the restriction. We have sympathy with the logic of their arguments; yet we firmly believe in the public policy arguments recited above and the need to avoid the apparent scandal of divorce petitions being presented immediately after the marriage. We think that a one-year absolute bar is the least intrusive and most straightforward of restrictions which accords with many of the views which have been expressed to us and is, accordingly, likely to be the most generally acceptable."

8. The Government has adopted the Law Commission's recommendations and Clause I implements it. It is to be noted that there has never before been an absolute time bar, and that therefore the Bill provides a sterner rule, arguably more protective to the institution of marriage, in this respect than at present.

9. There are undeniably attractive arguments in favour of reverting to the Victorian arrangement of no time restriction at all, thereby coming into line with Scottish law. But the Government has on balance concluded that the scale of such a change might signal, however wrongly, that Parliament now valued marriage less as an institution.

10. The following passages from the evidence are relevant:

"The Chairman: I have listened with fascination to the discussions of Part I. May I be clear on one point? Am I right, Sir John, that you said that you regarded the bar as something of a deterrent to divorce?

"Sir John Arnold: I said that the bar was widely regarded as something of a deterrent to divorce, and that it was therefore to some extent a buttress to the institution of marriage. For that reason, I do not think that you would be justified in removing it altogether, because that would denigrate the institution.

"The Chairman: Would you agree with that, Lord Scarman?

"Lord Scarman: Yes, I agree. We are discussing something that is very difficult to assess - the effect of the bar on the minds of young people whose marriages get into difficulty. I think that its positive effect is slight, but it acts in favour of impressing upon them that marriage is not an ordinary contract, but a very important institution. That is the positive argument for the bar." (Third Sitting, Col. 91).

"Mr Fairbairn: In Scotland, we have never had a bar, and we have had divorce ever since the Reformation. But I have never come across anyone in practice who has entered marriage with a view to seeing how quickly they can leave it. Accordingly, do you not think that to make marriage terminable in England after one year invests the institution with a temporary characteristic, rather than make what Professor Cretney called a symbolic assertion of permanence?

"Sir John Arnold: If this were a rule being introduced into Scots law, that would be a decisive factor. We deal with the point on page 3 of our memorandum, which states:

> "In Scotland however there has never been such a bar and the psychological effects of removal of such a provision have no part to play in the making of a decision."

If the observer sees something that has been in operation from 1937 suddenly and completely removed, the likely psychological effect will be a feeling that that is running down marriage. But that would not be said by a public that was not used to a bar at all." (Third Sitting, Col. 84).

11. There has been criticism, in particular by some Churchmen, that Clause 1 does not in fact achieve a desirable balance, but is likely to damage the institution of marriage. The change to a 1 year absolute bar will, so the argument runs, further erode the concept of marriage as a life-long partnership and encourage people to give up too easily in the early, difficult years of marriage. It is said that if Clause 1 is enacted Parliament will seem to be encouraging divorce for marriages which run into difficulties in the first year, and that the institution of marriage will therefore suffer. But the evidence the Law Commission received in response to their consultations, and the findings of researchers, suggest that the institution of marriage is less vulnerable. The large majority of people embark upon marriage in the belief that it will last indefinitely, and that if divorce happens it will be an unlooked-for misfortune. When a couple divorce it is likely to be after a considerable period of separation.

12. It is suggested that a lengthy period before a petition may be presented gives the parties opportunity for reflection and reconciliation. But the views of lawyers experienced in matrimonial matters, and of marriage guidance counsellors, is in general that once one party has decided to petition for divorce the chances of reconciliation are in any event slight. As one commentator on the Law Commission's Working Paper said:

> "The law of divorce cannot truly attain the aspiration of making marriages either work or last."

The following passage from the evidence is relevant:

> "Mr Weetch: Does the present rule, under which in some cases you make people wait three years, ever do any good?
>
> Mr Jackson: I have grave doubts about it. People who want to be divorced within three years do so because they consider - and perhaps they are the most important poeple in the equation - that the marriage has totally terminated. If I may respectfully remind you, there is in the relevant section a provision about prospects of reconciliation. I would think - I do not go back so far, I am happy to say - that that was a dead letter from the start. Certainly in my practical experience it has always been a dead letter." (Fourth Sitting, Col. 283).

13. There is, of course, no time restriction on the presentation of a petition for judicial separation, and there never has been one. There has been a very large increase in recent years in the number of such petitions, and a high proportion are presented within the first 3 years of marriage. Research in 1981 suggested that the proportion was well over 60 per cent, and since then there has been a further significant increase in judicial separations (from 5423 in 1980 to 7480 in 1982). Since only just over half of these petitions end in a decree, it is reasonable to assume that a larger number are superseded by successful petitions for divorce. These facts confirm that the 3 year discretionary time-bar for divorce petitions may defer divorce but that it does not seem to deter time.

14. The evidence does not suggest that a 1 year absolute bar will result in couples, in particular those who are young and perhaps immature, having recourse to the divorce courts more readily. The statistics do not indicate that young

people at present divorce more quickly than those who are older at the time of marriage, and there is no reason to suppose this would change. Marriages in which the wife was aged between 20 and 24 are, it is true, approximately 20 per cent more likely to end in divorce that those in which the wife is aged from 30 to 34 at marriage. However, apart from marriages in which the wife married as a teenager, the younger the wife at marriage the longer the marriage tends to last before divorce, as measured by the median duration of marriage.

15. Again, there is nothing to suggest that the substitution of a 1 year absolute time bar will result in more children with parents who are divorced. Of the couples who divorce during the first 3 years of marriage, 70 per cent have no children aged under 16 and, of couples who divorce during the fourth year of marriage, over 60 per cent have no children aged under 16. Thus, when a marriage breaks down irretrieviably after a comparatively short time it is more likely than not to be childless.

16. The available evidence, therefore, indicates:

(a) That people do not marry with a view to early divorce if the relationship does not work out;
(b) that young couples tend to stay married several years before resorting to divorce;
(c) that a period of years usually elapses between separation and divorce; and
(d) that the irretrievable breakdown of marriage culminating in divorce is not prevented by the 3 year time-bar.

17. The time bar, of course, has no effect upon what is the sole ground for divorce. This remains the irretrievable breakdown of marriage. It simply means that a person whose marriage breaks down irretrievably within the first 3 years cannot have the marriage dissolved, unless "exceptional hardship" or "exceptional depravity" can be shown. But in cases where these allegations are actually made, in support of a claim for the court's discretion, the court will only rarely decline to grant leave to petition. The trouble is that much harm to the parties and their family is done by the process of seeking leave.

18. It should be noted that the ability to re-marry is the only matrimonial relief that is uniquely derived from a decree of divorce. A decree of judicial separation, which can be petitioned for immediately after marriage, can where appropriate do everything else that may be sought in proceedings for divorce; but it cannot end the marriage. Yet preventing spouses who are separated (whether by judicial decree or de facto) from re-marrying cannot oblige them to live celibate and reflective lives until the three years are up. On the contrary, if they alrady wish to re-marry, as many do, it encourages adultery.

19. The Government believe firmly that marriage is the foundation of secure family life, which itself lies at the root of a stable society. Since 1857, however, Parliament has given to the Civil Courts jurisdiction in matters relating to the civil law of divorce, in recognition of the fact that some marrriages do regrettably break down and that when they do the consequences should be regulated by the courts. The institution of marriage will not be weakened by the steps proposed in Part I of the Bill to remedy the grave shortcomings in our civil divorce law which the Law Commission have identified.

PART II

"There is nothing in Part II which need cause apprehension to the middle-aged woman who has been deserted by her husband, and who has no reasonable prospect of supporting herself either by earning or from her own resources." (Lord Scarman, Lords Hansard, Vol 445, No. 36, Col. 64, on Second Reading).

"Mr Baldry: From your experience in the Family Division and in the Court of Appeal, is there anything in the Bill which can cause any apprehension to the deserted wife?

"Lord Scarman: Nothing." (Third Sitting, Col. 96).

"In case some attempt were made to argue that the new provision enlarged the extent to which conduct should be taken into account, I do not anticipate that this would be the subject of more than one appeal, in the judgement of which I would expect it to be firmly rejected." (Sir John Arnold, Second Sitting, Col. 78).

"It is entirely convenient that the matter of conduct, being eliminated through the repeal of the tail-piece [of Section 25 (1) of the Matrimonial Causes Act 1973], should be reintroduced with an equivalent effect of that which has gone before by a phrase which is designed and in my view effectively does give effect to the existing authorities." (Sir John Arnold, President of the Family Division of the High Court, Col. 77.

"Mr Baldry: So, in effect, the present definition in the Bill [of the significance of a party's conduct] is doing no more nor less than putting into statute where case law stands at the moment.

Sir John Arnold: That is what I believe." (Third Sitting, Col. 97).

These opinions expressed in evidence by judicial witnesses summoned by the Committee bear upon the two issues which dominated the discussion of Part II. These issues were whether its provisions will act unfairly and against the interests of women who are divorced after, for example, looking after their family for years; and secondly, whether its provisions will require the courts to attach greater significance than at present to the conduct of a party during the marriage when deciding such questions as maintenance payments.

The answer to both these questions is No.

1. The policy to which this part of the Bill seeks to give effect is contained in four of the recommendations made in paragraph 46 of the Law Commission's Report No. 112. They are that:-

(1) Section 25 of the Matrimonial Causes Act 1973 should be amended in the following respects:

(i) to seek to replace the parties in the financial position in which they would have been had the marriage not broken down should no longer be the statutory objective;

(ii) the guidelines contained in that Section should be revised, to give greater emphasis to the following matters:

(a) the provision of adequate financial support for children should be an over-riding priority;

(b) the importance of each party doing everything possible to become self-sufficient should be formulated in terms of a positive principle; and weight should be given to the view that, in appropriate cases, periodical financial provision should be primarily concerned to secure a smooth transition from the status of marriage to the status of independence.

(2) The court should be given power in appropriate cases to dismiss a wife's claim for periodical payments without her consent.

These are important changes which will cause the statute to reflect and affirm the principles which have been worked out in the courts over the last 13 years for providing the best approach to doing justice between the parties, while safeguarding the interests of children. They will not cause a major shift in the position of women, though they will undoubtedly help to promote the welfare of children.

2. There was a nearly unanimous response to the suggestion made by the Law Commission that the court should no longer be required to restore the parties to the financial position in which they would have been if the marriage had not broken down "so far as it is practicable and, having regard to their conduct, just to do so". The case for removing that requirement has been overwhelmingly made out: it is simply impracticable in the large majority of cases to put the egg of martrimonial finances back into its broken shell when the marriage has irretrievably broken down. It is damaging to impose upon the court this objective, which is generally unobtainable and not always desirable. It is unnecessary to put in its place any further express objective. The court will remain under the inherent duty to do justice between the parties, but to do so having regard to all the circumstances of the case including a number of matters which continue to be particularly specified. Always, the welfare of any child will have to be first considered.

3. It has been suggested that the Government should adopt the recommendations of the Scottish Law Commission Report "Aliment and Financial Provision", and include in the Bill a series of general principles about the way in which matrimonial property should be divided between the parties. But unlike the English courts, the courts in Scotland have at present no statutory guidance about the considerations which they should have in mind when they make financial provision orders in matrimonial proceedings and they lack the extensive body of case law which in England complements the statutory guidelines in Section 25. It would in the Government's view be unwise to substitute a new series of statutory principles for those carefully applied and developed by the English judges.

4. There has been considerable public interest in the provisions of the Bill relating to self-sufficiency and the "clean-break". These reflect the unequivocal recommendations of the Law Commission. The recommendations were themselves the result of the widespead feeling, amongst the many people and organisations who commented on the Law Commission's discussion paper, that greater weight should be given to the importance of each party doing what is reasonably practicable to become self-sufficient, in so far as this is consistent with the interests of the children of the family.

5. It is a mistake to suppose that there is any principle of life-long maintenance enshrined in the 1973 Act. Section 28 of the 1973 Act in fact provides that:

> (1) The term to be specified in a periodical payments [i.e. maintenance] or secured periodical payments in order in favour of a party to the marriage shall be such terms as the court thinks fit ...".

This provision is used from time to time by the courts to make an order for a limited period. Indeed, since the first Matrimonial Causes Act in 1857 the court has always had a discretion as to whether or not to order maintenance to be paid to a former wife on divorce. The existing law, however, does not permit the court without the applicant's consent, to dismiss with permanent effect an application for maintenance. Following the Law Commission's recommendation it has been thought right for the Bill to remove this bar.

6. The Bill also tells the court that it must consider, after granting a divorce decree, whether it would be appropriate for there to be a clean break (so far as financial obligations are concerned), and if so to consider at what time it would be just and reasonable for those obligations to be terminated. This does not lay down that a clean break is to be the norm, or anything like it. It merely requires the court to give its mind in each case to the question whether it would be appropriate.

7. This provides the difference in emphasis from the existing guidelines that the Law Commission recommends. To take an extreme example, a marriage of short duration which is dissolved when the wife is young, childless and well able to earn her living is not likely to call nearly so insistently, if at all, for the continuance of a financial obligation to the wife on the part of the former husband. On the other hand one does not have to go to an example at the opposite extreme in order to envisage circumstances in which it would be quite unjust for a husband to be relieved of responsibility to maintain his wife's former standard of living or something like it.

8. Concern has been expressed about the use of the "clean break" provision where there are children of the family. It must be borne in mind that 4 out of every 10 divorcing couples have no children aged under 16. Of these divorcing couples without children - which numbered just under 60,000 in 1982 - just over half the wives (31,000) were aged under 35 at divorce and 16 per cent (9,500) were aged under 25. Many of these women will be in full-time work and in a position to support themselves. Where there are children the court will of course always be required to put their interest first, and this will no doubt often lead to the conclusion that it would be wrong to make a "clean break" order.

9. The proposed removal of the requirement that the courts should attempt to

restore the parties to the financial position in which they would have been had the marriage continued, has necessarily involved a reformulation of the circumstances in which conduct should be taken into account in a financial provision order. At present when making an order Section 25(1) of the Matrimonial Causes Act 1973 obliges the court to "have regard" to the conduct of the parties. A series of judicial decisions, since the well-known Wachtel case in 1974, has resulted in the courts now disregarding conduct unless it would be inequitable to do so. The Government agrees with the Law Commission that this policy should be maintained. The amended Section 25(1) of the 1973 Act is designed to achieve just that effect and the Government is advised and confident that it succeeds. This was wholly confirmed in evidence to the Committee by Lord Scarman, Sir John Arnold, Mr Justice Gibson, Professor Cretney and Mr Joseph Jackson QC.

10. It has been argued that the Bill should state that conduct should only be taken into account if it is "gross and obvious". The Bill provides that the conduct of each of the parties shall only be taken into account if in the opinion of the court it would be inequitable to disregard it. This is the test the courts apply at present; and it is to this that the statements of Lord Scarman and Sir John Arnold set out at the head this section above relates. It means that the conduct of either party shall not be taken into account unless it would offend an ordinary person's sense of justice to disregard it.

> "Mr Jackson: I am totally against putting epithets into matrimonial statutes. For example, I would not put "gross and obvious" into a statute. That view is contrary to my trade union instincts, if I have any, because if such words were included they would keep me and my colleagues going for the rest of our practising days discussing what they meant." (Fourth Sitting, Col. 285).
>
> "Lord Scarman: We must remember that the adjectives "gross and obvious" were used in judgement. They are not to be found in statute. They are far too emotive, vituprative, abusive and unreal. We are not concerned with "gross". I do not know what gross means, although if it were applied to myself I would look at my waistline." (Third Sitting, Col. 96).

To write the words "gross and obvious" into the legislation would signal an intention to change the law without giving any clear indication of what the effect is intended to be.

11. It would be no less unsatisfactory to change the existing law by requiring that conduct shall only be taken into account "in exceptional circumstances", as has also been suggested.

> "The Solicitor General: When the matter was discussed in another place, Lord Elwyn-Jones suggested an alternative formulation of the conduct provision. He said that the concept of exceptional circumstances should be implied. Would you see the substitution of circumstances, rather than the concept of what was inequitable adding to the certainty of the formulation, or would it give rise to a whole new raft of case law, which would keep your trade union happy?
>
> Mr Jackson: I should really encourage you to put in such things, but I fear that I cannot." (Fourth Sitting, Col. 287).

Reform of the Family

CONCLUSION

Although the scope of the Law Commission's recommendations to which Parts I and II give effect, is modest, the provisions of the Bill will achieve reforms in our divorce law which are important and urgently needed.

Conservative Research Department
32 Smith Square, London, SW1

AC/LMRP
7.6.84

FCE SH

6 cc: Miss Rolliard

10 DOWNING STREET

From the Private Secretary

27 April 1984

COPTHALL STADIUM

Thank you for your letter of 25 April about Copthall Stadium, which the Prime Minister has noted. She was grateful to be kept in touch.

David Barclay

Miss Sue Faulkner,
Department of the Environment.

cc: Miss Rolland

(22/4)

PARLIAMENTARY UNDER SECRETARY OF STATE

DEPARTMENT OF THE ENVIRONMENT
2 MARSHAM STREET LONDON SW1P 3EB
01-212 3434

My ref:
Your ref:

25 April 1984

Prime Minister (2)

To note

DMB
26/4

Dear Private Secretary

COPTHALL STADIUM

The Prime Minister is already aware of the proposals for a national indoor arena to be sited at the Copthall Stadium. Although it does not fall within the Finchley constituency, its catchment area would be a wide one if it goes ahead. Copthall is, however, running into problems with funding and the Government may be criticised locally if the project fails. Mr Macfarlane thought that the Prime Minister should be forewarned.

2. It is the construction costs - estimated at around £12m - which are causing the biggest headache since the site itself is to be donated by L B Barnet and the Council will also contribute up to £300k pa towards operating costs. The Bernard Sunley Trust may contribute as much as 50% of the construction costs if the Copthall Trust receives charitable status. But these negotiations are proving to be lengthy and look, at the moment, uncertain.

There is also the additional problem that Copthall is in competition for private capital against 2 other major projects: an international standard complex in Birmingham and the conversion of a large warehouse in the London Docklands. Both projects are further down the road than Copthall and there must be serious doubt about the likelihood of all 3 projects raising private capital.

The Government may be criticised for "not contributing its share" but we have always taken the line that, wherever feasible, sport should meet its own needs and although the UK is deficient in high quality athletics stadia a substantial input from the private and voluntary sectors is required before public sector support can be considered.

We shall keep you informed of progress.

Yours sincerely

Sue Faulkner

S I FAULKNER
Private Secretary

Private Secretary

file DSG

cc Tsy
DES
Chief Sec

10 DOWNING STREET

From the Private Secretary

27 February 1984

JOINT CIRCULAR ON SPORT AND RECREATION

The Prime Minister was grateful for your Secretary of State's further minute of 21 February about sport and recreation. She is content for him to consider, in consultation with colleagues, alternative ways of getting across the message on dual use of facilities. The Prime Minister understands that your Secretary of State has in mind an initiative through the Sports Council, which would combine a promotional campaign with limited grants for which provision has already been made.

DAVID BARCLAY

John Ballard, Esq.,
Department of the Environment.

E.R.

CF: Papers pol

DMB

27/2

PRIME MINISTER

Joint Circular on Sport and Recreation

You decided against the view of a joint DES/DOE circular on Sport and Recreation because the timing was not right.

In the attached minute, Patrick Jenkin says that he accepts your decision about a circular, but hopes that you will agree that his Department should consider other ways of "getting the message across". I understand that he has in mind an initiative through the Sports Council, which would consist of a promotional campaign of dual use backed up by limited grants (for which the funds are available within existing provision).

Content for me to proceed in this way, in agreement with colleagues?

Yes ms

DB

24 February, 1984.

PRIME MINISTER

JOINT CIRCULAR ON SPORT AND RECREATION

Your Private Secretary wrote to mine on 10 February setting out your view that the time was not right for the issue of a joint Circular. I am slightly disappointed by this decision, but I do of course see the strength of Keith Joseph's argument.

The decision has, unfortunately, put us in a slightly difficult position because, rightly or wrongly, expectations of Government action in this area have been raised over the last few months. Neil Macfarlane referred in a major policy speech last November to a "new initiative" on dual use, and while the issue of a Circular has not been announced, knowledge of it has inevitably spread, and it was being looked forward to particularly by the Sports Council and the Association of District Councils.

At the same time we have been actively pursuing an initiative to persuade the country's major private employers to open their sports facilities to a wider public, and I am afraid that we could be accused of inconsistency if we are not seen to be making similar efforts in the public sector.

I still believe that there are considerable benefits that will flow from increased shared use of facilities, and while I fully accept what you say about the timing of the Circular, I do feel that my Department must now consider alternative ways of getting that message across.

I am copying this minute to Nigel Lawson, Peter Rees and Keith Joseph.

PJ

P J

21 February 1984

Home Affairs Values of
Society Pt 3

CONFIDENTIAL

10 DOWNING STREET

From the Private Secretary

15 February 1984

Joint Circular on Sport and Recreation

The Prime Minister has taken note of the Chief Secretary's minute of 9 February commenting on the Secretary of State for the Environment's proposal to issue a circular on sport and recreation jointly with the Secretary of State for Education and Science.

You may by now have seen a copy of my letter of 10 February to John Ballard (copied to Margaret O'Mara) in which is recorded the Prime Minister's view that the timing is wrong for the issue of such a circular.

(David Barclay)

John Gieve, Esq.,
Chief Secretary's Office

CONFIDENTIAL

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10 DOWNING STREET

From the Private Secretary

10 February 1984

Joint DOE/DES Circular on "Sport and Recreation: Future Provision"

The Prime Minister has considered your Secretary of State's minute of 2 February, together with that from the Secretary of State for Education and Science of 6 February, about a possible joint circular on sport and recreation.

The Prime Minister considers that the timing is wrong for the issue of such a circular. She feels that the Government must concentrate on securing the passage of the rate-capping legislation.

I am sending a copy of this letter to Margaret O'Mara (HM Treasury) and to Jerry Bird (Department of Education and Science)

David Barclay

John Ballard, Esq.,
Department of the Environment.

CONFIDENTIAL

FROM: CHIEF SECRETARY
DATE: 9 February 1984

PRIME MINISTER

Prime Minister (2)
To note Chancellor's views. We have told DoE and DES that you think the timing is wrong for a circular on this subject.
DMS 13/2

JOINT CIRCULAR ON SPORT AND RECREATION

I have seen copies of Patrick Jenkin's minute to you of 2 February, and Keith Joseph's of 6 February.

I recognise that the aim of Patrick's draft circular - endorsed by the Family Policy Group last year - is to secure fuller use of assets provided at public expense and thus to achieve better value for money. But it seems to me that its message is open to misinterpretation, and indeed deliberate distortion, in present circumstances. I fear that local authority interests would seek to exploit it as another example of Government exhorting authorities to pursue desirable policies but denying them the resources to carry these out. Patrick's text, of course, makes it clear that any increased expenditure on widening public access would have to be met by re-ordering priorities. But it is open to authorities to argue - not unreasonably in my view - that we should not urge them to spend more on one activity unless we are prepared to specify others on which we would be content to see them reduce their expenditure.

Since in addition there seem to be other difficulties over the content of this circular and there would be little point in issuing guidance which merely repeated advice we have given before, I share Keith's view that it would be best to take no action.

CONFIDENTIAL

I am copying this letter to Nigel Lawson, Keith Joseph and Patrick Jenkin.

PETER REES

HOME AFFAIRS · Values & Society

Pt 3

c/Policy Unit

PRIME MINISTER(1)

I am sorry to put these papers back to you, but you did not indicate whether you agreed with the Policy Unit advice.

The background is that Patrick Jenkin (Flag A) and Keith Joseph (Flag B) differ both on whether a circular should be issued on use of recreation facilities, and if so what its terms should be. The Policy Unit advice, which I find persuasive, is at Flag C.

They recommend that:-

(i) the circular should be issued;

(ii) there should be no caveats which purport to restrict LA's freedom to shift costs between budgets;

(iii) paragraph 21 of the draft circular should be re-drafted.

If you agree this line it would mean supporting Mr. Jenkin against Sir Keith Joseph, both on the question of whether a circular should be issued and on the nature of the references to education budgets. Sir Keith has asked for a meeting if his views are not accepted.

Agree:-

(i) response on the lines recommended by the Policy Unit.

(ii) short meeting if necessary with Mr. Jenkin, Sir Keith Joseph, and the Chancellor.

DMB

I really think that the timing is wrong for such a circular. We must concentrate on getting the rate-capping bill through now. not.

9 February, 1984

E.R.

8 February 1984
Policy Unit

C

PRIME MINISTER

DES/DOE JOINT CIRCULAR ON RECREATION FACILITIES

The Family Policy Group made a clear decision that local authorities should be sent a Circular, instructing them to give people the widest possible use of recreational facilities in schools and elsewhere. This is obviously a sensible policy, and there should be no question of allowing the DES to abandon the Circular now.

Keith Joseph argues that the text, if published at all, should stipulate that any increased costs be treated by LEAs as non-educational expenditure. You have two options:

- either smooth the waters by insisting that the Circular be published, but with the caveats favoured by Keith;

- or take a tough line, and insist that the Circular be published with no caveats, so that LEAs are free to distribute the costs between their budgets as they see fit.

The first of these options will cause less fuss. But the second is intellectually and politically superior on two grounds: (i) the Government cannot consistently claim, when talking about rate-capping, that LEAs should be controlled only in respect of aggregates, and then issue a Circular that attempts to dictate to them how to apportion the costs of recreational facilities between their various budgets; and (ii) the phrases inserted by the DES will not, in fact, achieve anything, since the "creative accounting" that LEAs use to distribute costs between their various budgets may enable them to disregard any advice on this topic, if they see fit.

You may also wish to draw Patrick Jenkin's attention to the drafting of paragraph 21. As it stands, this paragraph seems to say that LEAs should both meet any extra costs within expenditure targets and (additionally) offset these costs by charging fees; whereas it should say that LEAs will be expected first to offset costs by charging wherever possible, and then to meet the remaining deficit within expenditure targets.

OLIVER LETWIN

JOHN REDWOOD

"NO B

PRIME MINISTER

Await Chancellor

Joint Circular on Sport and Recreation

I have seen the Environment Secretary's minute of 2 February about this.

He has very fairly represented my views on the detailed points at issue between us. But, as he says, I doubt if this is the right moment to issue a Circular at all. Since my speech at the North of England Education Conference at Sheffield last month, which has attracted a good deal of support, I have come under heavy pressure from local education authorities about the impossibility of their adequately meeting their existing educational obligations, never mind the new ones to which I referred. The redeployment of resources will not always provide an answer to the problem because in many areas savings will be needed to enable the authorities to avoid grant penalties or to pay them. In other words our plans are already vulnerable on resource grounds.

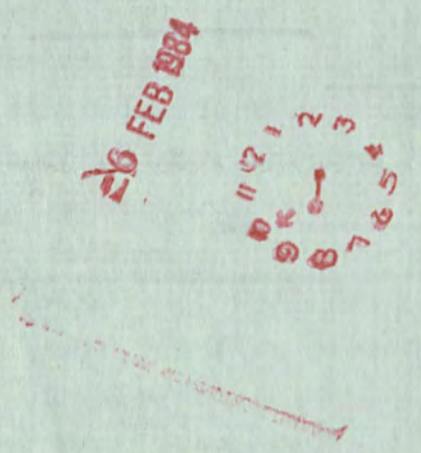
More generally, I do not think it would be right to take any action which would add to our difficulties over rate limitation. A Circular of the kind proposed would give local authorities and Parliamentary critics of the Rates Bill another weapon to use against us.

I am sending copies of this minute to the Chancellor of the Exchequer and the Environment Secretary. If you are inclined to reject my view, perhaps the three of us can have a short meeting with you before a final decision is taken.

KJ.

6 February 1984

Home Affairs : Renewing the values of Society A3



CONFIDENTIAL

BF A

SECRETARY OF STATE FOR THE ENVIRONMENT

Aug DES

PRIME MINISTER

JOINT DOE/DES CIRCULAR ON "SPORT AND RECREATION: FUTURE PROVISION"

You will remember that the Family Policy Group agreed last April that my Department and Keith Joseph's should prepare a joint Circular to encourage the wider use for the community of existing sport and recreation facilities. I attach a copy of the relevant minutes. A draft has now been completed and I attach a copy for your approval. I should mention that Keith is concerned about issuing the Circular at this time; I refer to this below.

Agreeing a text which serves our objective and takes full account of the concerns of the two Departments has proved very difficult and time-consuming. Both Keith and I are now satisfied that this draft Circular effectively conveys the message sought by the FPG, save for four short passages on which we have been unable to agree. These are all additional words desired by Keith, shown in square brackets in the text (paragraphs 6, 20, 21 and 23). I am sorry to bother you with this, but believe we have to seek your decision on whether or not these phrases should be included.

Paragraph 6 This is the key paragraph in the Circular, containing the "right of access" which was central to our discussions in the FPG last year. In my view, a statement about a "right of access" is an important lever which we need in order to encourage the opening of more schools to the community; without that clear message, the advise in this Circular may be thought to be little different to that issued in the past.

CONFIDENTIAL

Keith Joseph has pointed out that the notion of a right of access has no legal justification. While he is prepared to accept the present reference in paragraph 6 to such a right, he has asked for the addition of a phrase to make it clear that any increased expenditure on the use of school facilities for non-educational purposes should not be a charge on the education service, since it has no duty to meet such a charge.

I have resisted this addition, because I believe that, to achieve our objective of increasing shared use of facilities, clear encouragement is needed. Too many saving phrases and doubts in the text could lead to our message being ignored. The need to avoid increased local authority expenditure is already emphasised in paragraphs 19-22. In this paragraph the broad proviso that the primary purposes of school facilities are safeguarded seems to me sufficient.

If you nonetheless decide that a specific reference here to budgets is necessary, I would much prefer to see something less restrictive and would want to agree the final wording with Keith.

Paragraphs 20, 21 and 23

Keith Joseph attaches great importance to the words in square brackets in these paragraphs. He believes that, if we urge local authorities to do something which will cost money, we should put the onus for finding the offsetting savings on those interests within the authorities which will incur the extra expenditure. That seems to him to be the right financial discipline and in accordance with the principles of the Financial Management Initiative.

CONFIDENTIAL

SECRETARY OF STATE FOR THE ENVIRONMENT

It seems to me, however, that to advise local authorities about protecting particular budgets would not be inconsistent with our current policy. Our concern is with the aggregate amount of each authority's spending; it is for the authorities themselves to decide under which programme head they wish to put their expenditure within their overall targets. I should not want to suggest how they treat it, or which budget it should come under.

Keith is concerned that this may not be an opportune time to issue this Circular. He is writing to you separately setting out his views more fully, but in substance his concern is that the Circular is an encouragement for authorities to increase expenditure when our general policy is to contain it. No one knows better than I that the issue of local government spending is a particularly sensitive one at the moment but I think we have protected ourselves in this draft and I remain convinced that this is an important initiative which will encourage gains in value for money. Leisure time and needs are expanding, yet there are seriously under-used recreational resources in the community. This Circular is an essential part of my Department's campaign to unlock these resources.

If you agree that we should go ahead, the next step is for our two Departments to publish the Circular in draft, giving local authorities and other interested bodies the opportunity to comment.

I am sending copies of this minute with the draft text to Nigel Lawson and Keith Joseph.

PJ

P J

2 February 1984

CONFIDENTIAL

A JOINT CIRCULAR BY THE SECRETARIES OF STATE FOR THE ENVIRONMENT AND EDUCATION AND SCIENCE

SPORT AND RECREATION: FUTURE PROVISION

1. As leisure time has grown in the last two decades, so has the family and community need for sport and recreation facilities and opportunities. Both the public and private sectors have helped to meet this need. Most areas now have Leisure Centres and clubs which have proved popular and effective; many have become centres of family and community life, especially at weekends. Partly as a consequence, the demand for such facilities continues to grow. More are needed, to enrich urban and rural life. It is now widely felt that the greatest benefit, in terms of maximising usage and fostering a real sense of community involvement, lies in the provision of locally based, smaller scale centres.

2. To meet this important need, the Secretaries of State see a continuing role for both the public and private sectors. This Circular describes the steps already in hand and advises local authorities on the scope for further action on their part. In particular, it stresses that the best possible use should be made of existing facilities.

New Provision

3. The Government must continue to look to the private sector to use its entrepreneurial flair to meet some of the demand for local leisure and recreation facilities. Local authorities, too, should continue to play their substantial role in the provision and maintenance of sport and leisure centres, parks and open spaces, etc. The Government's commitment is demonstrated by the increases in Sports Council grant in recent years from £15.58m in 1979/80 to £28.002 in 1982/83. Within overall public expenditure constraints, this commitment will continue. The Sports Council has a major programme, called SASH (Standardised Approach to Sports Halls), designed to provide in conjunction with LAs up to 240 new community-based low cost sports halls in the next 5 years.

4. Neither the public nor the private sectors could be expected to provide new recreation facilities everywhere they are required or sought, in cities, towns and villages. An extensive new programme should in any case be unnecessary since there are many existing but under used facilities which could be made available to the community.

Community use of existing facilities

5. This Circular is part of the Government's broad initiative to seek wider use of existing sport and recreation facilities owned by the public and private sectors. The Minister for Sport is pursuing with the CBI and the largest companies and corporations the possibility of opening up more private sports clubs and grounds to the local community. He has made similar approaches to the nationalised industries and the Civil Service Sports Council. Against this background, the Secretaries of State ask local

authorities to review their existing facilities to assess how much, and in what way, their community use could be expanded.

6. Where facilities have been provided for community purposes, including those jointly provided with school premises, local authorities should make them available to the maximum feasible extent. The Secretaries of State believe that the local community has a right to be afforded access also to publicly provided school facilities on terms which ensure that the primary purposes of those facilities are safeguarded [and that no new demands are made on the budgets of LEAs].

Shared use of schools

7. Most LEAs can show examples of successful schemes for the shared use of school premises. For illustration, examples of good practice are in the Annex. At one end of a wide range of possible schemes, one or more of a school's existing facilities are opened for 'Dual Use' to organisations and individuals other than the primary users; at the other end of the scale is the arrangement called 'Joint Provision' where facilities for a school and the community are planned, provided and managed by more than one agency. This can be very successful and should always be considered when new capital projects are in preparation.

8. In reviewing the potential for shared use schemes there is considerable scope for imagination, whilst taking account of management needs and costs. Many imaginative schemes already exist, some based merely on making available one room for community use. A school hall can be used on some evenings for badminton, or on a weekend for a keep fit class or local dramatics; tennis courts or a

football pitch can be made available to a local club; a gym can meet a variety of community needs, on a controlled basis. Careful account must, of course, be taken of the care and maintenance of the facilities, for example, to avoid damage to playing fields through over-use. Voluntary and user groups can assist in setting rules governing usage and in ensuring respect for them. The views of those responsible for caretaking and cleaning duties should be taken into account at an early stage in the planning process.

9. Management is an important consideration and often the key to successful, cost-effective shared use schemes. LEAs should consider joining with Leisure and Recreation departments of their own or other Authorities in joint management of joint facilities. As experience has shown in many areas, there is also a prime role for the voluntary sector, which can do much to ensure that community involvement takes a practical form.

10. For joint management, there are already examples of joint committees planning and managing joint provision schemes. In establishing joint management committees the statutory responsibilities of the head teacher, the Governors of Voluntary and County Schools, and the LEA, cannot be set aside, but experience shows that the existing legal framework need not inhibit the growth of effective arrangements. These committees usually comprise (in non-metropolitan districts) representatives of County and District Councils, Voluntary and County school governing bodies, head teachers and school staff, and user groups. In some cases there may be a place for an outside body involved in the planning or management of the scheme, such as the Sports Council or the Regional Arts Association.

A substantial role can be assigned by local authorities to such committees, working within clear management responsibilities and objectives with, where appropriate, financial accountability.

11. The Secretaries of State see considerable advantage in a formal joint management structure. This can ease communications between Education and Recreation interests, enabling them to respond quickly to any problems that arise; it provides a single forum to deal both with strategic issues of recreation provision and with day-to-day management matters such as the organisation of bookings and the supervision of cleaning and caretaking. It should help to ensure that school staff, and in particular head teachers, are not burdened with unreasonable additional responsibilities through shared use.

12. Voluntary bodies concerned with sport and recreation clearly have an important role to play in shared use schemes. Indeed, experience indicates that their contribution is frequently essential. Authorities concerned about the management (or cost) implications of expanding shared use may find that voluntary groups will help to provide effective solutions. The Secretaries of State also recognise that the Adult Education service and the Youth Service have an important role in organising sport and recreation opportunities that make use of school and other community facilities.

13. The cost implications of shared use arrangements are discussed in paragraphs 19-22.

Wider use of other community facilities

14. Schools are one important source of the additional recreational

facilities and opportunities required in future years; another lies in expanding the use of other existing facilities in the community. LAs should review their properties and facilities to assess whether these can be used by the community for sport and recreation. For example, many publicly owned buildings (eg halls, warehouses, work shops etc) have in recent years, and for a variety of reasons, become redundant and unused. Authorities should urgently consider their recreational potential, if only for a short term period. Local voluntary groups should be able to advise on ways and means of realising this potential. The costs need not be great, particularly where voluntary sector management accountable to the relevant authority can be used to operate the resulting facility.

15. LAs are also asked to ensure that existing recreation centres and spaces suit the needs of the local community and are used to their fullest capacity. For example, authorities should ensure that policies on times of opening and charging do not put unnecessary obstructions in the way of potential users, including schools. The Sports Council and appropriate voluntary groups should be consulted to assist in overcoming difficulties.

Surplus School land

16. Regulations issued by DES* reflect the Government's determination to ensure that schools have sport and play space of a high standard. Further advice was published in Building Bulletin 28, asking LEAs to consider community recreational needs where a surplus of school land arises. In addition, DES Circular 2/81 points to the advantages of taking surplus places out of use at a time of falling

* The Education (School Premises) Regulations 1981. [SI 1981 No 909]

pupil numbers. In inviting LEAs to review their school stock, the circular drew attention to the possibility of identifying alternative uses - whether for education, for use by a different service of the authority, or for disposal. To assist this process, LEAs could helpfully seek the views at an early stage of representatives of providers and users of recreation facilities (and especially joint committees where they exist) on potential uses by the community - both their possible scope and how community use might be arranged and managed.

Surplus public recreational land

17. LAs are reminded that land which is both held and used as public open space, or for recreation, should not be entered in Land Registers. Such land is a vital and scarce resource to the community. LAs should not therefore dispose of it, or use it for other purposes, unless it is clearly no longer needed. Even then authorities may need to consider the scope for making up the loss by establishing new recreation facilities where they are required.

18. Local planning authorities (LPAs), when considering applications for the development of land currently used as open space, must of course take full account of the limits of alternative land uses, especially where housing and employment opportunities may be at stake[2]. However, open space can be a vital component of the proper planning of an area, both for sport and recreation and also, especially in urban areas, for its visual impact. LPAs should therefore give full weight to the benefits of preserving the amenity which the land already offers.

1 Land used as public open space, or for recreation, does not qualify for Land Registers maintained under Part X of the Local Government, Planning and Land Act 1980
2 Subject in Green Belt to MHLG Circular 42/55

Policies and proposals in Local Plans should be formulated accordingly.

Expenditure and manpower implications

19. Increasing the amount of time that school premises are in use adds something to revenue costs. There may also be additional capital costs, eg where buildings or entrances have to be adapted, or where extra facilities are provided. These capital and revenue costs will of course be very much lower than those required to provide new purpose-built facilities but they will nevertheless be an important consideration for the authorities concerned.

20. How to meet such costs is a matter for individual authorities to consider when contemplating shared use schemes. Costs should either be allocated to the responsible budget [which will not normally be that for education] or be apportioned between responsible budgets. For example, in a number of areas some at least of the costs of shared use provision are borne by the budget of the Leisure and/or Recreation Department.

21. Authorities will need to consider the capital costs along with competing demands for their existing capital resources. where schemes give rise to increased current expenditure, the Government looks to the authorities concerned to re-order priorities, (including Manpower) [in the responsible budget], to meet the requirement within their expenditure targets. Revenue costs will be met, in whole or in part, by charging, as for other leisure facilities in the community. Whilst avoiding substantial revenue deficits by recovering the full cost from those able to meet it, authorities may wish to vary charges so as to avoid discouraging groups or individuals with limited resources.

22. Where schemes require capital funding the Sports Council should be consulted. In some urban areas - perhaps those where the need for additional facilities is greatest - Urban programme funding or Urban Development Grant may be available, or there may be voluntary sector grant aid to eligible user groups. If land needs reclamation for sport and recreation use, funds are available under the Derelict Land Grant Scheme. Regional Offices of the Department of the Environment should be consulted on possible grant aid assistance. (A list of DOE and Sports Council Regional Offices is appended).

The next steps

23. This Circular asks LAs (including LEAs) to review existing facilities in order to maximise [within the responsible budgets] their use by the community for sportand recreation. More opportunities are needed; the wider use of existing centres and grounds must be explored to help to meet them. The Government is pursuing a number of initiatives to bring about greater use of a valuable community resource, and is particularly anxious that local authorities play their part. Effective planning, involving users and providers, is the key to this extension of use; a great deal of experience in this field has been gained over the last twenty years, and the Secretaries of State hope that this experience can be put to use across the country. They will be looking for the results of authorities' reviews, arising out of this Circular, over the coming year.

CHEW VALLEY SCHOOL, AVON

CONFIDENTIAL

Planning and management

This secondary school of about 1000 pupils has a well equipped sports hall built in 1974. During the course of construction, the District Council agreed to contribute towards the cost to improve the facility in return for some public access. As a result, two squash courts were added, the roof was raised to permit competition and the floor surface improved. The sports hall is now open to anyone on Sunday mornings; four voluntary groups have the use of it on other evenings (except Monday, which is kept for the schools) and on Saturday afternoons. There is a thriving Junior Racquets Club on Saturday mornings. The main activities are squash, badminton, keep fit and tennis. In addition, local junior football clubs make use of the football pitches at weekends; the village cricket club uses the cricket nets.

Finance

The sports hall was built in the school grounds and paid for by the County Council (Somerset initially, then Avon). To the total cost of £120,000 the District Council contributed £30,000. The voluntary clubs pay the County Council annually for their use of the facilities; no deficit is incurred. For the public use on Sundays, the school pay the caretaker to manage the facility and also pay rent to the County Council: they recover most of these costs in charges but a small annual deficit is met by the District Council out of its recreation budget.

Day to day management

The voluntary groups manage their own members and activities and are responsible to the County Council for any losses or damages. For Sunday mornings and other informal events, the school caretaker takes management responsibility, under the Headmaster.

MORNINGSIDE PRIMARY SCHOOL, ILEA, HACKNEY

CONFIDENTIAL

Planning and management

This Primary School built in 1902 plays host on three evenings a week a local weight-lifting club. The club first began some 50 years ago, when a local weight-lifter obtained access to a large room in a nearby school. On that school's closure, the club moved to a disused annex at Morningside School. The club continues to thrive. Anyone can join; tutors provide instruction and training and oversee safety.

Finance

The club has the room rent-free from ILEA and the school. Members pay a subscription of £40 per annum (the standard ILEA adult education rate). New equipment is supplied either by ILEA, or obtained and paid for by fund raising by club members.

Day to day management

The three classes each week are under the supervision of the Tutor and Assistant Tutor, both qualified (BAWLA) instructors. Management of the club is under the Principal of the Hackney Adult Education Institute.

\ NNINGHAM SPORTS COUNCIL, BRADFORD

CONFIDENTIAL

Planning and management

Manningham is a sports hall built in 19 . by the Recreation Division of Bradford MB. It is a centre provided for the whole of the local community, planned in close consultation with the users - schools, local groups, youth clubs, churches etc. During the day the centre is block-booked by schools; at other times use is by individuals on an informal basis or by organised groups (the disabled and Asian womens' organisations are two examples).

Finance

The scheme was funded through the DOE Urban Programme at a cost of £310,000 (capital and the first five years' revenue costs). Running costs are kept to a minimum through the use of many voluntary workers (several of whom were originally casual users). Charging policy is flexible, with special reduced rates offered to the young and unemployed. Deficits are met by the Council's Recreation Division.

Day to day management

The Centre is run by a Manager and full time staff. A great deal of the supervisory and administrative work is done by volunteers; many of these are users from the local Asian and West Indian communities, who first attended, as users, free informal recreation sessions for the unemployed. Specialist trainers (eg for the handicapped) are also volunteers. Cleaning and caretaking duties are undertaken by Council employees.

METROPOLITAN BOROUGH OF STOCKPORT: JOINT USE MANAGEMENT

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Responsibility for the identification and implementation of shared use schemes in Stockport is shared between the Borough's education committee and recreation and culture committee. The latter committee is responsible for parks and amenities, including the preparation and maintenance of school playing fields, as well as for indoor and outdoor recreation facilities and the youth service. They thus have a responsibility to provide indoor and outdoor sporting facilities both for the general public and for schools. For the purposes of planning and implementing shared use schemes, and of considering Borough-wide questions of recreation provision, a Youth and Dual Use facilities joint sub committee has been established on which the education committee and the recreation and culture committee are equally represented. This sub committee is a planning body and formal responsibility rests with the two committees and their divisions at officer level. The education division is responsible for processing and supervising works that are required to school premises to allow them to be brought into joint use (though there is, of course, a process of consultation between divisions at officer level), and management responsibility, covering staffing and control of the premises, caretaking, maintenance, cleaning, programming etc, is transferred to the recreation and culture division when the establishment is ready for use.

Both divisions report to the Joint Sub Committee, and through it to the education committee or the recreation and culture committee as appropriate; for individual schemes, an officers' coordinating committee is established under the chairmanship of the school's head teacher, with representation from the host school, further education, scheme management, and the youth service. This coordinating committee is established at an early stage in the planning process and meets as often as is necessary. It is this coordinating committee which establishes detailed arrangements for the running of the facilities, within guidelines set by the Council's joint sub committee and applied over the whole of the borough.

The Borough's sports and recreation facilities, whether or not attached to school premises, are organised within a 'group management' system which is arranged on a geographical basis, with five area managers responsible for between four and six individual sites each. This arrangement has the advantage of allowing a considerable amount of flexibility in the use of both supervisory and manual staff; this has clear advantages in terms of cost and effectiveness.

RUSHCLIFFE LEISURE CENTRE, WEST BRIDGFORD

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Planning and Management

Rushcliffe Leisure Centre is a 'joint provision' scheme, created at the time of the merging of two schools into one in 1968. At that time, Nottinghamshire County Council approached the Rushcliffe DC about partnership possibilities. The two schools already shared a single campus, so the new building was designed in the main, though not entirely, for joint use. The building contains

(a) for joint use, leisure pool, sports hall, classrooms/meeting rooms, changing rooms and circulation areas;

(b) for education only, school offices, staff room, teachers' centre, and youth wing;

(c) for community use only, squash courts, bar, cafeteria, and reception area.

At the same time a number of existing school facilities - concert hall, gymnasium, sports barn, and associated changing facilities - were brought into shared use and came under leisure centre management. This necessitated minor works to isolate these areas from the rest of the school. The centre was planned, and remains managed, by a joint County/Borough Committee.

Finance

The land and the scheme architect were provided by the County Council; since little of the new development was intended exclusively for school use, the Borough provided the bulk of the cost. A grant was obtained from the Sports Council, and the County Social Services Department gave money for special access provisions for the disabled. Running costs are shared - the County is recharged by the District the full maintenance costs of the school areas and 40% of the costs of the shared facilities.

Day to day management

The centre is managed by a Director who is an employee of the District Council. Programming responsibilities are clearly defined; the timetabling of use is shared between the school (9am to 5pm each school day) and the Director. This arrangement is, however, sufficiently flexible to allow simultaneous use by school and community to the extent that some 35% of the Centre's income is obtained in off-peak (often school) time. This

flexibility also allows greater intensity of use; the Centre [illegible]ters for over 300,000 non-school users per year. All of the centre's staff are District Council employees; formal responsibility for cleaning and care-taking falls to the district, with the county being recharged a proportion of the cost.

Home Affairs Pt 3

Value of Society

Miss Dutt

S-1

CONFIDENTIAL

Adv p1: Dr Holligan 14/4

S/S to see
c. PS/Mr Macfarlane
Mrs McDonald

covering letters missing - SS DES to PM 6/2

10 DOWNING STREET

From the Private Secretary

19 April, 1983

→ Mr Teasdale
Mr Strond
PPMNT

Dear Tony,

The Prime Minister took a meeting of the Family Policy Group at 0930 hours today. The Home Secretary, the Chancellor of the Exchequer, the Secretaries of State for Education and Science, Transport, Social Services, Employment and the Environment, the Lord Privy Seal, the Minister for Overseas Development, Mr. Macfarlane, Sir Robert Armstrong, Mr. Sparrow, Mr. Mount and Mr. Wasserman were also present.

In discussion of the papers by the Secretary of State for the Environment (FPG (83) 17) and by the Secretary of State for Education and Science (FPG (83) 18), the Group noted that there was already considerable dual use of community and school facilities; for example many local education authorities had a very good record. At the last meeting of the Group the Department of the Environment and the Department of Education and Science had been asked to consider how this record might be extended to all LEAs. The Secretary of State for the Environment now considered that a joint circular to local authorities on a right of access to community facilities and best practice was the approach most likely to be productive. The Secretary of State for Education and Science, however, considered that given the complexity of the education system further work was needed to establish the likely cost of and demand for greater dual use before a circular could be made effective.

Following a brief discussion the Prime Minister said that most of the Group favoured the issue of a joint circular to local authorities along the lines proposed by the Secretary of State for the Environment as soon as possible; the question of whether legislation was needed on a right of access to community facilities was not so urgent. The Secretary of State for the Environment should therefore consult the Secretary of State for Education and Science (and as necessary the Secretary of State for Employment) with a view to the resolution of the difficulties remaining in the way of a joint circular. When their discussions were completed they should report back to her.

/ On the

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On the question of the provision of resources for the extended use of community facilities the Group agreed that the maximum possible use should be made of existing resources; where additional resources were required they should, if possible, be provided through the private sector. In this context the Group noted that the Department of the Environment's pound for pound initiative was going well and seemed to indicate that an approach along these lines was likely to prove productive. There was also a possibility that community programme resources might be used to extend the local use of sports facilities although such schemes might not necessarily meet the criteria set out by the Secretary of State for Employment for the proper use of programme funds.

More generally, the Group noted the initiatives by the Sports Minister to persuade private and public sector industry to open their facilities to the public. He was also pursuing the possibility of opening up the considerable facilities of universities and polytechnics. The Lord Privy Seal also reported that the Civil Service sports clubs were anxious to ensure that their facilities were used to the maximum practical extent.

Summing up this part of the discussion the Prime Minister said that it was clear that much was already being done to extend public access to private sports facilities and to make sport and recreation facilities available to a wider public. The Secretary of State for the Environment should prepare a note setting out the progress which had been achieved for a wide circulation amongst Ministers and Government backbenchers.

In discussion of his paper (FPG(83)16) the Secretary of State for Social Services said that there was a small number of self-help family centres already of which one of the most successful was at Botcherby in Carlisle. The existing centres provided a wide range of services including crisis and support counselling, care for very young children and facilities for the elderly. These centres were based on the concept of mutual help; there was some evidence that their successful operation could considerably reduce the number of referrals to the Social Services Department. The proposals set out in his paper were a modest attempt to stimulate the establishment of further centres. In discussion there was general agreement that family centres were potentially a promising means of combining support for families in trouble with other facilities such as simply a place for young mothers who would otherwise be isolated to meet. While, however, there was also agreement that the proposals in the paper offered a reasonable way of stimulating the expansion of such centres it was stressed that the emphasis should be overwhelmingly on support for voluntary activities. There was also some doubt as to whether the National Council of Voluntary Organisations was the best vehicle through which the scheme for ten regional family centre workers should operate.

Summing up this part of the discussion the Prime Minister said that the Group agreed to the proposals set out in FPG(83)16 provided that the additional family centres which it was intended to stimulate were overwhelmingly voluntary. She invited the Secretary of State for Social Services to take the scheme forward in consultation with the Home Secretary on its organisational details.

Opening a discussion on the voluntary sector and in particular of his papers(FPG(83)13 and 14)and that by the Secretary of State for Social Services(FPG(83)15) the Home Secretary said that the Government's broad strategy towards the voluntary sector was to regard it as a supplement - or a complement - to public provision. Experience had proved that voluntary bodies discharging statutory services tended to be no more cost-effective than the public sector. The Group agreed nevertheless that voluntary organisations played a vital complementary role to that of the state and in this context it was suggested that more use could be made of business organisations such as Rotary Clubs and Womens Institutes which had local regional and national structures.

Summing up a short discussion the Prime Minister said that the Group endorsed the general principles of the Government's approach to the voluntary sector set out in FPG(83)13 subject to the reservations that the grants to voluntary bodies should not be presented as perpetual commitments and that training in the voluntary sector should not be seen as a state responsibility.

In discussion of finance of voluntary bodies the Group noted there had been a disturbing decline in the amount of giving by companies in recent years despite considerable concessions made by the Chancellor of the Exchequer. The Home Secretary had made a number of proposals in this area and the Chancellor of the Exchequer was considering these together with a proposal that tax relief should extend to single donations. Another more extensive reform of charity finance would therefore have to await a reform of charity law. While such a reform was attractive, if only to reduce the amount of administrative effort in the Charity Commission and Inland Revenue which was required to police charity law, its complexity had defied previous efforts to produce a simple solution. In particular any extension of charitable status would bring with it the danger of encouraging extremist political activity carried on under the cloak of apparently laudable voluntary effort; moreover a reform of charity law might subsequently be misused to bring into question the charitable status of independent schools.

Summing up this part of the discussion the Prime Minister said that the Chancellor of the Exchequer should now proceed to examine the proposals made by the Home Secretary to encourage giving to charities. He would also consider what administrative savings might be made in the administration of the law on charity finances. For the moment, therefore, a more general review of charity law could not take a high priority.

I am sending a copy of this letter to John Kerr (HM Treasury), Imogen Wilde (Department of Education and Science), Richard Bird (Department of Transport), Steve Godber (Department of Health and Social Security), Jonathan Spencer (Department of Industry), Barnaby Shaw (Department of Employment), David Edmonds (Department of the Environment), Mary Brown (Lord Privy Seal's Office), Pamela Hilton (Department of Overseas Development), Richard Hatfield (Cabinet Office Mr. Sparrow and Mr. Wasserman (CPRS), and for information to Muir Russell (Scottish Office) and Adam Peat (Welsh Office) and Derek Hill(Northern Ireland Office).

Yours ever

A.R. Rawsthorne, Esq.,

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2pps Home Affairs

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB

01-212 3434

My ref: J/PSO/13483/83

Your ref:

22/7

21 July 1983

Dear Keith,

FAMILY POLICY GROUP: JOINT DOE/DES CIRCULAR ON DUAL USE AND COMMUNITY USE

I have seen the paper prepared by our officials setting out proposals for the Joint Circular requested at the last meeting of the Family Policy Group. I agree with the overall approach on content and timing. The proposals look sound and I believe we have the makings of a very useful Circular.

I was about to write to you, when your letter of 7 July arrived. I am disappointed to learn that you do not share my view on the outstanding issue of rights of access which we must resolve quickly if we are to meet our timetable. My sympathies and Neil Macfarlane's are with the arguments attributed to DOE in paragraphs 5 and 6 of the paper. Advice of the kind proposed by your officials has been issued in the past, without achieving that further and substantial breakthrough in dual use of schools we now need. More facilities are urgently needed in many areas: public expenditure restrictions must prevent our meeting all these needs through new provision. The voluntary sector is ready and able to play a responsible role in helping to manage community facilities. I suggest therefore that we must look for the kind of positive guidance in this Circular that will direct LEAs and LAs more strongly than hitherto and provide a lever for voluntary groups anxious to gain access to particular facilities.

This initiative on dual use is an essential element in our wider efforts to bring more existing facilities into community use. The CBI are supporting Neil Macfarlane's initiative to open up private facilities to the community and I feel sure that this important campaign will be assisted if we are seen to be taking a robust line with the public sector.

I also consider that the DOE statement more accurately reflects the intentions of the FPG. I understand that the Prime Minister and other members were sympathetic to the idea of a statutory right of access in the longer term. I can appreciate your concern about the initial reaction of LEAs, but I feel sure that we can salve their feelings in the drafting, eg by reference to good practice now.

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I agree that some LEAs might take paragraph 2 as implying a call for further expenditure. Some further expenditure may of course be inevitable, but we must remember that opening up a school or other existing facility can save substantial expenses in providing and operating new facilities. I would expect this section of the Circular to make that point, and to advise on ways of meeting additional costs eg from the Leisure and Recreation budget, through pricing and by specific grants under the Urban Programme and other schemes.

I note you copied your letter to the Chancellor of the Exchequer. Other members of the FPG should be aware of the progress we have made, so I am copying to them this letter, yours, and our officials' paper.

As we appear to be in agreement on the main points in the circular and the timescale is tight, I have asked my officials to press ahead with yours in preparing a text. If you still wish to support the DES line in the paper on rights of access, I suggest we meet for an urgent discussion. In that case perhaps your Office could contact mine to arrange a date.

Yours ever

Pat

PATRICK JENKIN

The Rt Hon Sir Keith Joseph Bt MP

G1SS5

CONFIDENTIAL

Early AR for: Mr Tarsdale

DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE, YORK ROAD, LONDON SE1 7PH

TELEPHONE 01-928 9222

FROM THE SECRETARY OF STATE

cPS/Mr Macpherson

7 July 1983

Dear Patrick

PROPOSED DOE/DES CIRCULAR ON DUAL AND COMMUNITY USE

You will I expect by now have received a copy of the submission which was prepared by DOE and DES officials following a decision by the Family Policy Group in April that a Joint Circular on Dual and Community Use should be issued as soon as possible.

The main purpose of this letter is to draw your attention to a point arising on paragraph 12 of the submission, which refers to "sensitive pricing policies". With an eye on our rate limitation legislation, I am concerned that this term, if employed in a circular, might well be taken by local education authorities to imply a call for additional expenditure. This could lay the Government open to a charge of speaking with two voices, a point to which you refer when you mention circulars in your minute of 29 June to the Prime Minister about legislation. It is surely consistent with our general policies that people should so far as they are able pay the full cost of facilities of this kind; and I should be opposed to anything which looked like asking LEAs to subsidise dual or community use more than they otherwise would.

The submission also discloses (paragraphs 5-7) an unresolved issue between officials on a "right of access". I hope that you will accept the DES view, which I fully endorse.

No doubt you will let me know if you see any difficulty over these two points, which are both of real substance.

I am sending a copy of this letter and the submission to Nigel Lawson.

Yours Keith.

Rt Hon Patrick Jenkin MP
Secretary of State
Department of the Environment
2 Marsham Street
London SW1P 3EB

CONFIDENTIAL

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FAMILY POLICY GROUP: JOINT DOE/DES CIRCULAR ON DUAL AND COMMUNITY USE

1. This submission considers the procedures, timetable and content for the Joint Circular which it was agreed by the Family Policy Group at its last meeting before the Election should be prepared. It indicates one important issue for Ministers to resolve before drafting is commenced. Attached at Annex A is the note of the FPG meeting and at B and C the DOE and DES papers submitted to the Group.

The Document

2. A Circular is, for both Departments, the most appropriate and effective medium for the messages that Ministers want to deliver to local authorities (LAs) and local education authorities (LEAs) in England. In accordance with DES practice, the Circular should first be published in draft, thus signalling the Government's determination to issue guidance but giving authorities and others the opportunity to comment on the details. DOE Circulars are not first published in draft, but the messages on dual use are key ones and their reception by education interests would be endangered if the normal consultation procedures were not observed.

Timetable

3. Early publication is required, which means that the advice in the Circular must be based on currently available data. DOE will take the lead, consulting closely with DES and also with DE (for the Manpower Services Commission (MSC)) and approaching local authority representatives. If possible a draft should be agreed and published by the end of July, for comment by the end of September and issue shortly thereafter.

Contents

4. The Circular will have four main objectives, each of which is discussed below:-

(a) More widespread and intensive dual and community use, through advice about rights of access and on best practice;

(b) Better liaison at the local level between education and leisure interests;

(c) Fuller use of existing land and facilities;

(d) Sensitive pricing policies for local facilities.

5. Dual and Community Use Ministerial direction is needed on the key issue of rights of access to community and school facilities. DOE take the view that a clear statement expressing the Government's belief in the right of access could lead to real progress in expanding dual use; it would provide both a lever for local voluntary groups and positive guidance for LAs and LEAs. Whilst it is clear that primary legislation would be necessary before a Circular could refer to a statutory right of access, there remainsrights other than those based on statute. Municipal ownership implies community/public participation and use; a right of access based on this premise and expressed in a Circular could have some moral force and thus open doors. However, DES consider that LEAs would react adversely if told - without justification in statute - that they had a duty to open schools to community use. They would see a potential conflict with their statutory duties to provide for education; the widespread willingness of LEAs to help over dual use might be weakened and its expansion could suffer accordingly. DES would therefore prefer a statement which fully recognised LEAs independence and obligations as well as the Government's objectives.

6. Alternatives for the "clear statement" agreed by the FPG have been explored. DOE would prefer:-

"/The Government/ believes that the local community has a right of access to recreation facilities provided for schools by the taxpayer. Even where these facilities were provided for educational purposes, LEAs and schools should recognise this right of access to them by giving the community the fullest possible use. At the same time LAs should ensure that all community facilities are as widely available as possible".

7. DES would prefer the following:-

> "The Government believes that in principle it is right that facilities provided for community purposes should have the widest possible use, and that the local community should have access to school facilities which are appropriate for community use, wherever this can be secured without detriment to their primary purpose. Local authorities are urged to ensure that all members of the community have the greatest possible access to their facilities, and LEAs are urged to allow local people the fullest possible use of school facilities".

8. The statement, in whatever form is finally agreed, should be prefaced by an acknowledgement of the good work already being done (as indicated in the DES survey of shared use in 1978-79, to be updated and extended later this year). Examples of best practice can be provided from DOE and DES experience and from consultation with local authority representatives. Emphasis will be given to proven examples of overcoming management and financial obstacles and in particular to the role of voluntary groups, within the community, in successfully developing and managing community use of facilities.

Vital!

also vital! done of it very good.

9. Some LEAs and headteachers have a reasonable fear that school facilities - in particular playing fields - could suffer damage if subjected to extended use which exceeds their designed standards. (They may also foresee a higher risk of careless or wilful damage). The Circular should allay such fears by making it clear that any community use must have the limits and controls necessary to avoid damage and over use of the facilities and to protect them for their primary purpose. This may mean increased supervision, but that need not involve in every case an increase in resource commitment by the school authorities as experience has indicated that user groups may be prepared to participate in managing facilities.

Yes! ✓

10. Better Liaison at Local Level In many areas dual use can be expanded by better liaison between education and leisure/recreation interests. Joint Education and Recreation Committees have been successfully established in some authorities. Some other Councils now employ development officers responsible for encouraging the dual use of educational and recreational facilities.

11. Fuller Use of Existing Land and Facilities As para. 5 implies, the Circular is directed at the wider use for sport and recreation of all community facilities, not just those in schools. Authorities are to be urged to ensure that access to community facilities (especially by young people) is not blocked by unrealistic charges or hours of opening. They should seek to arrange the widest possible use of all their community facilities. They should consider allocating land and buildings temporarily out of use to sport/recreation clubs and activities. Careful drafting will be required on the disposal of surplus land; LEAs and LAs must assess the balance of advantage for the authority and community between selling off surplus land (e.g. for housing), in order to enhance capital receipts, and retaining it for sport and recreation. The recent controversy created by the CCPR about losses of sport and recreational land indicates that advice is needed on the role and use of land registers; reference should also be made to guidance already given by the DES in the context of falling school rolls and concerning the application of their current regulations on playing fields. Finally, this section would also mention DOE initiatives to encourage community use of industrial and commercial recreational facilities.

12. Sensitive Pricing Policies The key word is "sensitive". DES regard finance as an important obstacle to dual use; it normally leads to additional costs on the education budget for heating, lighting, cleaning, maintenance and security. Some LEAs have shown themselves willing to subsidise certain uses but there is no such duty. The Circular should advise on ways of meeting these costs. They can be defrayed through contributions from leisure and recreation budgets and also by charging individuals and voluntary groups/clubs for their use of the facilities.

13. The levels of charges should be such as to encourage community use without generating awkward revenue deficits. The normal basis for pricing policy should be marginal costs, but differing uses may justify a range of charges.

Finance

14. The Circular will provide guidance on the financial help available to authorities in opening up facilities to the community. Additional capital and revenue expenditure may be met from LAs recreation budgets but also through grants from such bodies as the Sports Council, the Arts Council, and from the DOE's Urban Programme and Derelict Land Scheme and some MSC Programmes.

Universities, Polytechnics and Colleges of Further Education

15. Brief reference should be made in the Circular to the Polytechnics and Colleges of Further Education. The Circular should acknowledge their good record on dual use and urge LEAs to encourage its extension where possible. For the Universities (whose facilities are not in general available to local communities) a separate approach is recommended, by the Minister for Sport through the Committee of Vice-Chancellors and Principals, keeping the UGC Chairmen informed.

Next Steps

16. Once the broad outline of the proposed Circular is agreed by Ministers - and guidance is given in particular on the rights of access issue highlighted in paras 5-7 - LA and LEA representatives should be approached on a confidential basis. They will be asked to help with examples of best practice. DOE will then agree a draft of the document with DES and, in respect of MSC Programmes, with DE. This will then be put to Ministers for their approval to issue it as a basis for consultation.

Home Affairs

Hy01067

CABINET OFFICE
Central Policy Review Staff
70 Whitehall, London SW1A 2AS Telephone 01-233 7217

22/4

P L O'Leary, Esq.,
Board of Inland Revenue,
Somerset House,
Strand,
London, WC2

22 April 1983

Dear Peter,

Family Policy Group: Charities and Tax Avoidance

You may by now have seen the note of the discussion at the last meeting of the Family Policy Group of the Home Secretary's paper on private giving to the voluntary sector. (Tim Flesher's letter of 19 April to Tony Rawsthorne refers.) In view of the work which the Chancellor has undertaken on this matter, I thought that you might find it useful if I were to expand briefly on Flesher's summary of the discussion and, in particular, on the second sentence of the penultimate paragraph of his letter in which he refers to "the administrative savings that might be made in the administration of the law on charity finances."

As Flesher reports, the Chancellor expressed concern about the extent to which the present fiscal incentives to charitable giving were being abused for purposes of tax avoidance and pointed out that the present law was very difficult to police effectively notwithstanding the fact that there were about 500 officials employed on charities matters in the Revenue and in the Charity Commission. There followed a brief discussion of the political difficulties inherent in reviewing charity law, at the conclusion of which the Chancellor undertook to examine ways of reducing the present scope for tax avoidance without touching charity law. I imagine that he had in mind the sorts of thing which we have been discussing; e.g., the US provision which requires charities to distribute a certain percentage of their annual income.

I hope that this gives you a slightly clearer idea of what was discussed at the meeting and of the sort of work that you may be called upon to put in hand. As I told you when we spoke, the CPRS would be happy to help with this work.

I am sending copies of this letter to David Faulkner (Home Office), Peter Kemp (HM Treasury), Tim Nodder (DHSS), Mary Brown (Lord Privy Seal's Office), Richard Hatfield, Ferdie Mount and Tim Flesher.

Yours,

Gerald Wasserman

(G J WASSERMAN)

Home Affairs
FPG, A73

CONFIDENTIAL

Home Affairs

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

Chancellor of the Duchy of Lancaster
and
Paymaster General

19 April 1983

Mr. Fletcher

pa.

21/4

Dear Robin,

FAMILY POLICY GROUP

Mr Parkinson has asked me to convey, through you, his apologies to the Prime Minister for his absence from the Family Policy Group this morning.

I am afraid that we have come unstuck (for the first time as far as I am aware) through Mr Parkinson's having two offices and two diaries. For some reason the meeting did not find its way into his Smith Square diary, and although we have a system designed to ensure that these discrepancies are discovered before the event, this week the wrong people were away from the office at the wrong time.

Yours ever,

Alex Galloway

A K GALLOWAY
Private Secretary

F E R Butler Esq
10 Downing Street

CONFIDENTIAL

SUBJECT

CONFIDENTIAL cc master RM

File bc: Mr. Mount

10 DOWNING STREET

From the Private Secretary

19 April, 1983

Dear Tony,

The Prime Minister took a meeting of the Family Policy Group at 0930 hours today. The Home Secretary, the Chancellor of the Exchequer, the Secretaries of State for Education and Science, Transport, Social Services, Employment and the Environment, the Lord Privy Seal, the Minister for Overseas Development, Mr. Macfarlane, Sir Robert Armstrong, Mr. Sparrow, Mr. Mount and Mr. Wasserman were also present.

In discussion of the papers by the Secretary of State for the Environment (FPG (83) 17) and by the Secretary of State for Education and Science (FPG (83) 18), the Group noted that there was already considerable dual use of community and school facilities; for example many local education authorities had a very good record. At the last meeting of the Group the Department of the Environment and the Department of Education and Science had been asked to consider how this record might be extended to all LEAs. The Secretary of State for the Environment now considered that a joint circular to local authorities on a right of access to community facilities and best practice was the approach most likely to be productive. The Secretary of State for Education and Science, however, considered that given the complexity of the education system further work was needed to establish the likely cost of and demand for greater dual use before a circular could be made effective.

Following a brief discussion the Prime Minister said that most of the Group favoured the issue of a joint circular to local authorities along the lines proposed by the Secretary of State for the Environment as soon as possible; the question of whether legislation was needed on a right of access to community facilities was not so urgent. The Secretary of State for the Environment should therefore consult the Secretary of State for Education and Science (and as necessary the Secretary of State for Employment) with a view to the resolution of the difficulties remaining in the way of a joint circular. When their discussions were completed they should report back to her.

/ On the

On the question of the provision of resources for the extended use of community facilities the Group agreed that the maximum possible use should be made of existing resources; where additional resources were required they should, if possible, be provided through the private sector. In this context the Group noted that the Department of the Environment's pound for pound initiative was going well and seemed to indicate that an approach along these lines was likely to prove productive. There was also a possibility that community programme resources might be used to extend the local use of sports facilities although such schemes might not necessarily meet the criteria set out by the Secretary of State for Employment for the proper use of programme funds.

More generally, the Group noted the initiatives by the Sports Minister to persuade private and public sector industry to open their facilities to the public. He was also pursuing the possibility of opening up the considerable facilities of universities and polytechnics. The Lord Privy Seal also reported that the Civil Service sports clubs were anxious to ensure that their facilities were used to the maximum practical extent.

Summing up this part of the discussion the Prime Minister said that it was clear that much was already being done to extend public access to private sports facilities and to make sport and recreation facilities available to a wider public. The Secretary of State for the Environment should prepare a note setting out the progress which had been achieved for a wide circulation amongst Ministers and Government backbenchers.

In discussion of his paper (FPG(83)16) the Secretary of State for Social Services said that there was a small number of self-help family centres already of which one of the most successful was at Botcherby in Carlisle. The existing centres provided a wide range of services including crisis and support counselling, care for very young children and facilities for the elderly. These centres were based on the concept of mutual help; there was some evidence that their successful operation could considerably reduce the number of referrals to the Social Services Department. The proposals set out in his paper were a modest attempt to stimulate the establishment of further centres. In discussion there was general agreement that family centres were potentially a promising means of combining support for families in trouble with other facilities such as simply a place for young mothers who would otherwise be isolated to meet. While, however, there was also agreement that the proposals in the paper offered a reasonable way of stimulating the expansion of such centres it was stressed that the emphasis should be overwhelmingly on support for voluntary activities. There was also some doubt as to whether the National Council of Voluntary Organisations was the best vehicle through which the scheme for ten regional family centre workers should operate.

Summing up this part of the discussion the Prime Minister said that the Group agreed to the proposals set out in FPG(83)16 provided that the additional family centres which it was intended to stimulate were overwhelmingly voluntary. She invited the Secretary of State for Social Services to take the scheme forward in consultation with the Home Secretary on its organisational details.

/Opening

Opening a discussion on the voluntary sector and in particular of his papers(FPG(83)13 and 14)and that by the Secretary of State for Social Services(FPG(83)15) the Home Secretary said that the Government's broad strategy towards the voluntary sector was to regard it as a supplement - or a complement - to public provision. Experience had proved that voluntary bodies discharging statutory services tended to be no more cost-effective than the public sector. The Group agreed nevertheless that voluntary organisations played a vital complementary role to that of the state and in this context it was suggested that more use could be made of business organisations such as Rotary Clubs and Womens Institutes which had local regional and national structures.

Summing up a short discussion the Prime Minister said that the Group endorsed the general principles of the Government's approach to the voluntary sector set out in FPG(83)13 subject to the reservations that the grants to voluntary bodies should not be presented as perpetual commitments and that training in the voluntary sector should not be seen as a state responsibility.

In discussion of finance of voluntary bodies the Group noted there had been a disturbing decline in the amount of giving by companies in recent years despite considerable concessions made by the Chancellor of the Exchequer. The Home Secretary had made a number of proposals in this area and the Chancellor of the Exchequer was considering these together with a proposal that tax relief should extend to single donations. Another more extensive reform of charity finance would therefore have to await a reform of charity law. While such a reform was attractive, if only to reduce the amount of administrative effort in the Charity Commission and Inland Revenue which was required to police charity law, its complexity had defied previous efforts to produce a simple solution. In particular any extension of charitable status would bring with it the danger of encouraging extremist political activity carried on under the cloak of apparently laudable voluntary effort; moreover a reform of charity law might subsequently be misused to bring into question the charitable status of independent schools.

Summing up this part of the discussion the Prime Minister said that the Chancellor of the Exchequer should now proceed to examine the proposals made by the Home Secretary to encourage giving to charities. He would also consider what administrative savings might be made in the administration of the law on charity finances. For the moment, therefore, a more general review of charity law could not take a high priority.

I am sending a copy of this letter to John Kerr (HM Treasury), Imogen Wilde (Department of Education and Science), Richard Bird (Department of Transport), Steve Godber (Department of Health and Social Security), Jonathan Spencer (Department of Industry), Barnaby Shaw (Department of Employment), David Edmonds (Department of the Environment), Mary Brown (Lord Privy Seal's Office), Pamela Hilton (Department of Overseas Development), Richard Hatfield (Cabinet Office), Mr. Sparrow and Mr. Wasserman (CPRS), and for information to Muir Russell (Scottish Office) and Adam Peat (Welsh Office) and Derek Hill(Northern Ireland Office).

Yours ever

Tim Flesher

A.R. Rawsthorne, Esq.,
Home Office

10 DOWNING STREET

A copy of FPG(83)18 was sent to Colin Phillips.

A copy of FPG(83)14 was sent to the Lord Privy Seals office.

Mark Ke
18/4/83

E.R.

15 April 1983
Policy Unit

A

PRIME MINISTER

FAMILY POLICY GROUP: 19 APRIL 1983

There are six papers to be considered. Three points of substance need to be decided.

1. Sport and Recreation: Tom King's Paper FPG(83)17
   Use of School Facilities Outside School Hours: Keith Joseph's Paper FPG(83)18

Tom King suggests a joint DOE/DES circular containing a clear statement about right of access, plus advice on how to overcome the obstacles (caretakers, insurance, cost, etc). This would be an attractive approach. Lazy or obstructive LEAs would have less excuse for saying "we can't afford it". And sports groups would be able to invoke the circular when LEAs proved unhelpful. We could also make it clear at the time of sending the circular that we would not hesitate to take tougher measures if the response was poor.

DES officials, on the other hand, want to rule out legislating for a right of public access and are reluctant even to offer advice until early next year, after consultations with interested parties and finding out more information. But the DES has been 'consulting' and 'encouraging' since the year dot. Plenty of LEAs have learnt how to offer reasonable access without incurring unreasonable expenditure. We should urge that good practice becomes nationwide.

We recommend that the Group endorses a joint circular.

2. Support in Parenthood: Self-Help Family Centres:
   Norman Fowler's Paper FPG(83)16
   Keith Joseph would also like to say a word.

The idea of family centres is appealing. Equally clearly, we do not want to set up another national bureaucracy. But what Norman suggests in the first instance - 11 workers to advise local people on how to set up the centres - is modest and sensible.

But there are questions to be answered:

(i) How would the family centres differ from existing community centres? If the difference is that the family centres would be largely voluntary, how do we prevent creeping demands for more and more paid staff?

(ii) Can we use the Community Programme? Officials seem a little too sceptical about the possibility of the family centres finding plenty of unemployed young people who would help out in return for the MSC allowance.

We recommend that, provided Norman can make it clear that these family centres will remain overwhelmingly self-helping and voluntary organisations, he should have the approval to follow through the proposed initiative.

3. Voluntary Action and Giving to the Voluntary Sector:

Willie Whitelaw's Papers FPG(83)13 & 14
Norman Fowler's Paper FPG(83)15

The Home Secretary offers a useful review of the voluntary sector and the ways in which Government can and does help. But much of the paper is addressed to a rather extreme question which we have not really asked - namely, why don't we let volunteers take over some of the welfare services? Surely what we are really interested in is how the voluntary sector can make a bigger supplementary contribution to the statutory services.

The real question is how do we reverse the decline in charitable giving, particularly by companies?

Willie says he does not want to re-open the thorny question of charity law. But then, in effect, he does re-open it by suggesting that fiscal benefits should be extended to a defined range of voluntary bodies not registered as charities.

Here the objections of the Inland Revenue are crucial. They argue that it would be wrong to extend fiscal benefits significantly so long as charitable status is open to abuse for personal gain. It is hard to deny that, if we do extend fiscal concessions as suggested in Willie's 15(iii)(b), nasty tax-dodging scandals would crop up.

E. B.

I think, therefore, that we do have to consider the question of charitable status. We might wish to consider the possibility of the American two-tier system in which, as I understand it, only certain charities selected as desirable and impeccable receive the full range of full fiscal concessions. There are difficulties about the value-judgments involved in Government drawing up a list of accredited "super-charities". But so long as we stick to the present system, the concessions we offer are likely to remain depressingly stingy, for fear of scandals.

We recommend that we should examine the possibilities for further fiscal relief for a carefully selected list of charities.

FERDINAND MOUNT fm

E.B.

2

PRIME MINISTER

MF

Family Policy Group

The Group is to meet at 9.30 on Tuesday. Since there are a number of papers, you might like to glance at them over the weekend. They are as follows:-

Flag A: Ferdie's paper drawing together the issues raised in the various papers

Flag B: Sport and Recreation (DoE)

Flag C: Use of School Facilities Outside School Hours (DES)

Flag D: Support in Parenthood: Self-Help Family Centres (DHSS)

Flag E: Voluntary Action to Meet Social Needs (HO)

Flag F: Giving to the Voluntary Sector (HO)

Flag G: The Voluntary Sector (DHSS).

TF

15 April, 1983.

10 DOWNING STREET

From the Private Secretary

15 April, 1983.

Dear Tony,

Family Policy Group

The Family Policy Group is to meet at 9.30 on 19 April. The agenda will comprise:-

Item 1 — Sport and Recreation
Paper by Secretary of State for Environment
FPG(83)17

Use of School Facilities Outside School Hours
Paper by Secretary of State for Education and Sciene
FPG(83)18

Item 2 — Support in Parenthood: Self-Help Family Centres
Paper by Secretary of State for Health and Social Security
FPG(83)16

Item 3 — Voluntary Action to Meet Social Needs
Paper by Home Secretary
FPG(83)13

Giving to the Voluntary Sector
Paper by Home Secretary
FPG(83)14

Paper by the Secretary of State for Health and Social Security
FPG(83)15

I am sending copies of this letter to the Private Secretaries to the Chancellor of the Exchequer, the Secretaries of State for Educatio and Science, Industry, Transport, Social Services, Employment, the Environment, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Minister for Overseas Development and to John Sparrow, and for information to the Private Secretaries to the Secretaries of State for Scotland and Wales. A copy also goes to Richard Hatfield (Cabinet Office).

Yours ever,
Tim Flesher

Tim Flesher

Tony Rawsthorne, Esq.,
Home Office.

C

20

FPG(83)18

FAMILY POLICY GROUP

15 April 1983

Use of school facilities outside school hours

Note by the Secretary of State for Education and Science

1. On 9 March the Group invited me to arrange for a study of the obstacles to the greater use of school facilities outside school hours and to recommend means of dealing with them. The necessary work is not yet complete but it is now possible to break down the problem, to rule out certain approaches and to identify others which hold some promise of success.

2. Three categories of case are subsidiary to the main issue:

(1) special considerations apply to the 25% of schools which are voluntary schools. They do not belong to the local education authorities (LEAs); their governors have the main responsibility for determining their use out of school hours; and many voluntary schools can be expected to go on making facilities available and thus raise additional income for themselves. I intend to encourage the churches, who own the great majority of voluntary schools, to consider how their facilities might be made more widely available;

(2) there is a very small minority of schools, rural as well as urban, which are organised as community schools so that the same building houses both the school and facilities for adult education and youth work. Such schools exist to offer facilities for their local community both during and out of school hours, and generally do a good job in this respect. The LEA meets most of the cost. Setting up new ones would be expensive. But I shall continue to encourage this process by using the Urban Programme where the opportunity arises;

(3) we must, I believe, leave on one side the generality of those schools belonging to the LEA (the county schools) where extended use is possible only after capital works eg to meet safety or security requirements. But I shall continue to support proposals for capital expenditure to this end which come forward under the Urban Programme.

3. I have considered whether it would be helpful to legislate for a right of public access to county schools. If this were enacted, the LEA would have to have the right to refuse access, if access was liable to make the facilities eg playing fields unserviceable for school use; the LEA would also have to have the right to impose conditions eg in relation to the supervision of the activity for which access was granted, and to recover the extra costs it incurred in granting access. These restrictions would probably mean limiting the right of access to organised groups and to those who could be trusted to supervise participation by individuals; they would not make the right all that valuable even to such groups. There would certainly be much room for dispute between the LEA and those claiming the right, and the burden on the Courts or specially constituted appeals machinery might be heavy. I doubt therefore whether it is worth while pursuing the idea of a public right of access.

4. The study I have set in hand suggests that the practical problems of extending the use of school facilities, and the reluctance of eg some head teachers and caretakers to take on the extra task of tackling them, are most readily overcome if the operation is adequately financed. Important extra costs are heating, cleaning and security. All these fall on the LEA because it is responsible for maintaining the school and employing staff such as caretakers. A recent study by the Local Authority Conditions of Service Advisory Board shows that caretakers are willing to work substantial overtime in this connection provided they are paid accordingly; doubtless the

employment of additional caretakers would help in some cases.

5. In principle the necessary extra finance could be found either by the local authority - perhaps in the discharge of its non-educational functions - or by the users of the facilities. Some authorities have shown themselves keen to do this. One shire county, Kent, is experimenting in one of its areas with the appointment of a Dual Use Development Officer responsible for encouraging the wider use of educational and sports facilities. If such measures were widely applied, they would presumably have to be financed under the block grant arrangements, which give the Government little leverage.

6. I believe that the most promising approach to the problem of finance is to consider whether we should find ways of funding the potential users - particularly the voluntary sector. The Home Secretary's papers FPG(83)13 and 14 address this possibility. The MSC's Community Programme may not, in its present form, be a generally suitable vehicle for finance because it understandably requires the subsidised activity to provide employment for a community purpose by limited categories of unemployed people.

7. The next step is to prepare the ground for sustained Government pressure on LEAs to extend the use of schools out of school hours, including, if necessary, a campaign to mobilise public opinion against bureaucratic inertia or trade union intransigence. But we shall improve our chances of making such pressures bear fruit if we can first identify the target and avoid well-founded charges that we are flying in the face of the facts or of our own public expenditure policies. I shall therefore obtain in the autumn detailed information based on a properly constructed survey about who now uses schools out of hours, on what scale, and under what financial arrangements; and about the extent to which there really is unmet demand for school facilities, given that most schools now offer some out-of-hours facilities and that there may have to be charges for them.

8. In the light of this information, which I would publish early next year, I propose, in discussion with the local authority associations and other interested parties (including those representing possible users), to consider what public guidance to LEAs would be most effective. I would aim to give guidance on such aspects as:

(1) expenditure on running costs and manpower on the part of LEAs;

(2) charging policies;

(3) making available facilities within schools which were originally designed for community use but which have had to be used for school purposes as pupil rolls rose: pupil rolls are now declining;

(4) disposing for community use of playing fields which have become surplus to the new minimum requirements which my Department promulgated in 1981;

(5) advice, based on good practice, about the organisation and management of a systematic approach to making a school available out of hours.

9. I also propose, in the light of the new information obtained, to mount a public campaign designed to stimulate local pressures on LEAs if the situation, including the attitude of the local authority associations, were to make this desirable.

Department of Education and Science KJ
15 April 1983

B

FAMILY POLICY GROUP

FPG (83) 17

Copy No. 19

14 April 1983

SPORT AND RECREATION

NOTE BY THE SECRETARY OF STATE FOR THE ENVIRONMENT

1. In its previous discussion the Family Policy Group (FPG) considered that expanding participation in sport and recreation could contribute to family and community development - especially for young people. The Government's record in funding is already a good one. Grant-aid particularly to the major agency, the Sports Council, has increased from £15.2m in 1979/80 to £27m in 1983/84. Other direct grants (eg. the Urban Programme) are now about £20m per year. To get the maximum participation by the family and the young requires more and better local facilities, promotion and motivation.

FACILITIES

2. The previous DOE paper (FPG/83/10) identified a need for more local, community facilities. FPG felt that one important solution lay in the dual-use of school facilities. Some local education authorities (LEAs) still point to the problems in bringing more school facilities into community use. But the problems have been overcome - or ignored - in most areas of the country in recent years. My Department is now supporting a voluntary sector Working Group which aims to bring user pressure to bear at the local level and also to propagate "best practice".

3. We must make every effort to bring suitable school facilities into community use. The family and the community should have a right of access to facilities provided by and for the community through statutory authorities; achieving this requires encouragement and pressure at all levels. A joint DOE/DES Circular containing this message would support and complement the voluntary sector's campaign. Specifically, the proposed Circular would:-

(a) Contain a clear statement about right of access;

(b) identify best practice in LEAs, to help overcome the obstacles to dual-use perceived by some authorities;

(c) encourage the formation of joint education and recreation committees in local government, to co-ordinate the provision and use of local facilities;

(d) Urge all authorities to take steps to intensify the use of existing facilities and co-operate with the private and voluntary sectors in bringing vacant land and buildings into (at least temporary) recreational use. We could

usefully clarify the aims and role of Land Registers and of the new DES regulations on recreation space in schools.

(e) encourage sensitive pricing policies for local facilities, which neither obstruct wide community use nor generate large revenue deficits.

If the Group agrees I will arrange for preparation and drafting of this Circular to be put in hand quickly. My Department will be happy to take the lead.

5. There remains a need to provide more sport and recreation facilities for local communities. We have in hand Neil Macfarlane's initiative to persuade private and public sector industry to open their sports facilities to the public. The £-for-£ scheme has started well in Liverpool and we are about to launch two more projects in Bristol to the North East. The major programme is the Sports Council's; it is to provide 60 standardised, low cost (£0.5 million) sports halls in needy areas, in partnership with local authorities, by 1987. We should like to accelerate this programme. But it would require extra public resources, as the proposed locations will not readily attract private sector funds.

PROMOTION AND MOTIVATION

6. Somewhat less than 50% of the population currently take part in sport and recreation; the proportion is markedly lower for the young employed and for minority groups. The goal of greater participation requires some promotion and publicity, responsibility for which was given to the Sports Council in their Charter. They take it seriously. The Council's slogan is "Sport for All" and this message is carried in leaflets, stickers, etc at facilities and events throughout the country. The main responsibility for promoting participation must remain with the Sports Council: Neil Macfarlane and I will urge them to continue to give it priority.

7. There is an important role for leaders and motivators at the local level - especially in the inner cities - in encouraging and organising young people to take part in sport/recreation activities. Teams (called "Action Sport") have been established in London and the West Midlands, drawn mainly from the unemployed this is a Sports Council programme, in partnership with local authorities, which we are supporting. The programme has obvious benefits and could be expanded quite rapidly, given extra funds. We must however look for a heavier involvement by the voluntary sector. The Sports Council has this need in mind.

RESOURCES

8. Sport and Recreation has already received additional funding under this Government. The money has been well and quickly spent; it has particularly benefited the inner cities and the young unemployed. With increasing leisure time for the family and the population at large, we must continue to give priority to sport and recreation provision and I therefore hope the Group will support my case for further increases in funding over the next two to three years. We must of course look for a greater contribution from the voluntary sector, particularly in helping to manage facilities and in participating as leaders and trainers. Allowing for this, an extra £5-10 million per annum (on the current provision of £27.03 million) for the next 2-3 years would substantially speed up the local sports hall programme and enable us to establish Action Sport teams in other cities.

TK

14 April 1983

Department of the Environment
2 Marsham Street
LONDON
SW1P 3EB

D

PG (83)16
14 April

SUPPORT IN PARENTHOOD
SELF HELP FAMILY CENTRES

Note by the Secretary of State for Social Services

Family Centres which provide social and recreational services for the community can also help to prevent families at risk from getting into difficulties and provide support for families already under stress. In this way assistance can be given without automatically labelling parents as having failed in some way or as being problem cases. The centres can also offer opportunities for example for adult education or for youth clubs, and for local discussion about the problems of unruly children between residents, probation service, police, social workers, teachers etc. Developments of this kind, which give the right sort of support to parents, may indeed well play an important part in the reduction of juvenile crime.

2. This paper discusses the needs of such centres and how they might be developed, and proposes an intiative in the voluntary sector involving:-

- encouragement by the National Council of Voluntary Child Care Organisations (NCVCCO) of established voluntary organisations to develop more centres in particular using Community Programme (CP) funds from the Manpower Services Commission (MSC)

- help to local groups via Regional Family Centre Workers linked to the National Council of Voluntary Organisations (NCVO) with the remit to stimulate and promote local developments with particular reference to the use of CP funds.

What is a Family Centre

3. Family centres may arise out of initiatives by local people or by a large voluntary body, or be established by a local authority. Essentially they develop in one of two ways:-

a. from a neighbourhood base, but then developing facilities to meet particular local needs;

b. from a 'problem base', gradually extending to encompass facilities for ordinary families.

Ultimately some family centres may well look the same whatever their origin, but the objective in this paper is to go via route a. with emphasis on prevention and early support of difficulties, rather than on dealing with established problems.

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4. Models vary according to how the local community see their needs, but two examples are given below:-

a. Botcherby, Cumbria Social Services Department.

This centre provides the following services: for under fives, a day care unit (8.45 am-5 pm), pre school playgroup, baby group, mother and toddler group; a mother and child clinic and a pregnancy group; for 5-15 year olds, youth clubs and holiday play; intermediate treatment for young offenders; day club and evening activities for senior citizens; more generally, a coffee bar, Open University groundwork sessions and Women's Dance Group.

b. Blackburn. Diocese of Blackburn Board for Social Responsibility. (Support from Lancashire County Council and Urban Aid.)

This started out as a local community club, then provided a summer holiday scheme especially for children of families where there was unemployment or only 1 parent, a weekly club for glue sniffing youngsters, run first by social worker and then by local resident, and a mobile coffee bar for young people, provided by County Youth Service.

5. Centres usually have Advisory Committees bringing together residents, community groups, local professionals from statutory bodies and elected representatives. The Blackburn centre for example involves an officer of the Social Services Department, a County Councillor, representatives of the local churches, a representative from the Secondary School, and 3 representatives of local community groups. The Committee support the Centre Leader, monitor the work and advise on its development.

Resources needed

6. Premises/Equipment

There might be one meeting place or several, with particular activities in particular places. The meeting place might for example be an adapted pair of semi-detached houses, a local school or college or a church hall; often LAs will provide premises rent-free - if not, a lot of capital may be needed. A modest amount of equipment is also required.

7. Staff

If worthwhile and lasting results are to be achieved, a nucleus of trained staff is needed to shape the activities. Typically, family centres have a Centre Organiser. Other staff eg to run the various sessional activities, to organise creche facilities, and to provide administrative support, could be local residents, either acting as volunteers or employed by a voluntary body. Some would need to have appropriate experience or to receive some preparatory training.

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Sources of Finance

8. Local authorities often give some financial support from their ordinary resources eg sponsored day nursery places, sponsored IT, rent free premises, adult education staff time.

9. A number of Family Centres are supported under the Urban Programme. This number might be increased if LAs were asked to give them priority in compiling proposals. Though the need is essentially for revenue expenditure, this is an area in which a modest number of staff can help to mobilise considerable community resources. The guidelines to be issued in May might make special reference to family centres.

10. Funds for volunteers - either the DHSS "Opportunities for Volunteering" or the MSC Voluntary Projects Programme could also be relevent in some circumstances.

11. The MSC Community Programme (CP) provides the opportunity to staff the centres if employment goes to those who have been out of work for some time. DHSS officials have had a preliminary talk with officials from Department of Employment and MSC, when a number of potential difficulties were aired eg

a. CP runs only to October 1984 so that MSC commitment can only be to 1 years funding. However there could then be a review with the possibility of extension.

b. The Centre Organiser would need to be retained for considerably longer than 52 weeks if the project continues: renewal of contract is permissible under CP rules so long as no other suitable unemployed person is available.

c. Any one particular project may employ relatively few staff, and the operating costs of the centre may not be fully covered by the MSC allowance (up to £440 per year for each place provided - whether full time or part time).

12. It seems unlikely that the CP could fund all the costs of a Family Centre, but in some places it could make a significant contribution. And it seems reasonable to expect that the community will help itself in the traditional ways - jumble sales, sponsored walks etc.

Constraints on developments

13. There seem three important constraints on developments:-

a. A lack of initiative in some places. Though LAs have powers in this area, they do not have duties and may not see family centres as a high priority. And local people may lack the confidence themselves to start a project.

b. Ignorance among local people and the smaller voluntaries about how best to take advantage of the various sources of finance or how to plan a centre in an organised fashion.

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c. The need for a suitable body to act as employer; a small centre may be unwilling or unable to accept such responsibilities.

Possible initiative

14. We need better co-ordination of effort between the major voluntary organisations (NCVO, NCVCCO), the large voluntary bodies (National Children's Home, Church organisations etc) and small local groups, with the objective of helping local people make optimum use of human and financial resources. As the Home Secretary says in his paper, there is a key need to boost the local voluntary sector's infrastructure. Two pieces of action now could help to promote family centres:-

a. Appointment of a National Family Centre Worker to NCVCCO, cost say £25,000 pa (of which salary about £8,000 pa), to stimulate key voluntary bodies into promoting local activity, to give advice on harnessing available resources and in particular to promote CP projects.

b. Establishment of up to 10 Regional Family Centre Workers employed by NCVO at cost of say £250,000 pa to stimulate action by small local groups, to help them to sponsor and manage CP projects, and more generally to advise on how best to finance a centre from all the various available sources.

15. This would cost perhaps £0.3 million in a full year. Though the posts would not be wholly concerned with Community Programme projects, they should result in a number of relevant projects. However MSC say that, since it seems unlikely that there will be suitable unemployed people to fill these posts, it is unlikely that it will be appropriate to provide money from the Community Programme. But financing needs to take into account that Family Centres would provide services which cover a range of Departmental interest (DES, Home Office, DoE).

Next step

16. NCVO and NCVCCO have indicated informally their interest in doing something in this field. The initiative would next need to be discussed in detail with them and MSC. The Local Authority Associations need also to be put in the picture, since the Family Centre Workers would need to work closely with LA staff to co-ordinate efforts. The discussions would also need to cover how the effect of this input of resources would be monitored.

Proposals

17. I invite colleagues to agree that:-

a. a sum of £0.3 million pa be in principle allocated to fund a number of Family Centre Worker posts;

b. DHSS officials should hold detailed discussions with NCVO, NCVCCO and MSC;

c. subject to a satisfactory outcome, the initiative be launched as soon as possible.

NF

Department of Health and Social Security
14 April

CONFIDENTIAL

2 MARSHAM STREET
LONDON SW1P 3EB

My ref:

Your ref:

14 April 1983

Dear Tim

FAMILY POLICY GROUP

I enclose 20 copies of my Secretary of State's paper on sport and recreation for the next meeting of the Group. As I agreed with you, the Secretary of State will be accompanied by Mr Macfarlane.

Yours sincerely,
Roger Bright

ROGER BRIGHT
Private Secretary

Tim Flesher Esq - No 10

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FPG(83)15
14 April 1983

THE VOLUNTARY SECTOR

Note by the Secretary of State
for Social Services

I support in general the approach which the Home Secretary, in his two papers, adopts to the voluntary sector in its important role of meeting social needs. It seems to me vital that we convince people that the range and scale of social needs - and I am thinking particularly of infirm elderly people, handicapped people and children - is way beyond what could or should be met by public provision. The emphasis should be on the totality of help that can be given by both the voluntary and the public sectors - and, increasingly, by private sector involvement.

I agree with the Home Secretary that we should not put at risk the contribution which the larger organised voluntary bodies make. They provide variety and choice, even though they are often manned, in the main, by paid professional staff. Bodies like the NSPCC and Barnardos are reliant, to some extent, on both 'core' and 'project' funding from public sources. They also provide services on payment for example to local authorities who sponsor children in care. My Department's funding - under powers which are sufficiently defined in statute - is mainly towards their headquarters expenditure, and to meet costs of particular innovative local projects.

The Home Secretary stresses the need for better training, and I agree. Some of DHSS grants are spent with this in mind, and I would like to provide further support, if additional finance becomes available.

The other main area of voluntary endeavour is the encouragement of local community support and self-help groups. This is the area to which my existing initiative "Opportunities for Volunteering" is

directed. In the context of family support, it is the main plank of the programme set out in my other paper for the Group. And it will feature in the proposals I shall be bringing back to the Group later on, for the better support of home care of the very frail elderly. The Home Secretary's papers propose that local trusts and similar arrangements should be stimulated so as to give a framework of organisational and financial help to these groups. I have also found it useful to work down through the regional and local organisations of some of the major organisations such as Mencap, who can quite quickly provide a necessary minimum of administrative support and accountability, provided I can give some funds to pay for this management. There is no doubt room for both approaches.

Wherever possible we should encourage the closest links between the local authorities and the voluntary sector. The role of the local authority social services departments is as both a provider of special care for those who need professional, expert help and an "enabler" to ensure that those in need are assisted by effective voluntary bodies, neighbours and volunteers, without having to rely in the first instance on a state service. Where voluntary effort has needed to be stepped up - notably in some inner cities - the urban programme has been useful: but it has not always supported projects with revenue for long enough nor as many schemes to meet social need as would be desirable.

In his paper about "Giving" the Home Secretary has suggested how the business world should be brought closer to meeting social needs by support of volunteer work and voluntary bodies; both in cash and in kind. I entirely agree, and want to find ways of persuading the businessman - and the shop-floor worker - to do much more to help the infirm elderly, handicapped people and children. The contacts we have made in DHSS suggest that there is already interest, but it needs to be fostered and shown how to make an effective contribution.

In addition to the suggestions made by the Home Secretary for further work by officials I think we should consider :

- displaying as much Ministerial support for firms who sponsor 'social needs' as those who sponsor 'arts' or 'sport';

- engaging one or two senior businessmen to study the field and advise my Department on the tactics we - and the national voluntary organisations - should adopt.

As a Government, we should continue to support effectively by grants the general level of activity by voluntary bodies. We should build on the 'Opportunities for Volunteering' scheme and back it up with initiatives focussed on particular priority tasks. Provided we do not relax our own efforts, including our measures to improve efficiency, I would have no hesitation in calling on the community itself - in business and beyond - to do more.

NF

Department of Health and Social Security
London
SE1

14 April 1983

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FPG (83) 14
5 April 1983

GIVING TO THE VOLUNTARY SECTOR:

CAN IT BE EXPANDED?

Note by the
Home Secretary

If voluntary bodies are to do an effective job in supporting and supplementing statutory services, especially in local situations, they must have adequate resources. To the maximum extent possible, the necessary resources should come from private rather than public sources. Voluntary bodies need people's time and skills as well as their money. This paper suggests that they could be helped to obtain more of each of these by a determined drive to persuade industry and commerce to demonstrate a greater concern for the social needs of the community around them and to make the local work place more of a focus for individual and corporate giving and volunteering. It recognises that the business community will need some encouragement to act in this way and considers various possibilities for providing this, including further fiscal changes.

Charitable giving now

2. The total income of charities - excluding the churches, universities and other educational bodies - is not far short of £3000m, and in a typical year some 40% of this income represents gifts or grants made during the year from private sources. The rest includes investment income, fees, charges, trading income and, in increasing measure but still only around 10% of the total, grants by central and local government. Company giving, at under 2% of the total and 5% of voluntary giving, at present makes only a minor, and declining contribution. (Sponsorship and charitable advertising would add to the total, but their benefit is mainly felt in the arts and sports world.) More important is giving by charitable trusts (10%) and legacies (10%). Giving by individuals, of which some 32% represents covenanted gifts attracting repayment of basic rate tax to the charity, amounted (including fiscal benefit) to nearly 19% of total charitable income.

3. The impact of the recession is increasingly felt. There is less impulse giving. In real terms charitable giving by companies has declined, especially recently. The current drop in interest rates is hitting investment income and giving by charitable trusts. The Chancellor's generous concessions for covenants by higher rate taxpayers, and on C.T.T. are helpful, but have so far benefitted most more sophisticated national charities with access to wealthier donors - causes like the national heritage, private health care and medical research.

4. Individual charities' income and prospects vary widely. The voluntary income raised by professional fund-raisers for established charities for medical research, children or animal welfare, or for prestigious arts trusts may be relatively buoyant: unpopular causes, e.g. offenders, and smaller, local bodies, especially new groups in areas of social deprivation, rely much more heavily on grants from statutory bodies and charitable trusts.

5. Local voluntary groups can often draw on the time, skills and enthusiasm of volunteers. But the finances of many local groups, even with support from statutory sources, including Urban Programme and M.S.C. funding, are usually precarious. Much more effort and volunteer time is needed to raise sums which a few years ago were easily attainable. Some groups have scope for income generating activities, but many have not. It is unrealistic to expect local voluntary groups to take on more of the growing task of meeting social needs from their own resources, unless something can be done to increase the pool of charitable giving locally.

Scope for action

6. What is needed is:-

- to reverse the downward trend in corporate giving, and seek ways of extending the habit of giving, particularly regular giving, to wider sections of the population;
- to find ways of stimulating, at local level, giving of all kinds - time, skill and money to voluntary groups and charities whose activities benefit the local community.

7. American experience suggests that too obvious a Government lead may be counter-productive, and that the role of the corporate sector could be crucial. 'Business in the Community' has been set up with funds and secondees from industry to promote socially responsible involvement by companies in their local communities. To date it has focussed on job creation schemes and setting up local enterprise trusts, where it has been helped by the provision in the 1982 Finance Act which makes contributions to them tax deductible. But it plans a wider thrust, embracing other forms of voluntary action to meet social need.

8. There will be obstacles:-

- most small and some large firms are close companies, and their gifts are treated as gifts by the shareholders as individuals;
- giving by large companies in the U.K. is over-concentrated at headquarters and Director level;
- leading companies prefer to give to prestigious, or conspicuous projects (e.g. universities, opera) and are wary of risk-taking, and of small local projects;
- company management and voluntary groups often do not talk the same language;
- there is widespread reluctance to make gifts in replacement of statutory funding, to which companies already contribute through taxation.

9. We should take this last point seriously, since the belief that the State has a direct responsibility for meeting the nation's social needs is now deep-rooted. There is no consensus on the precise limits of statutory bodies' responsibilities, but what is known about the present spread of corporate giving suggests that potential donors give little priority to charities which meet the major social needs. One study suggests that in 1980 only 2% of giving by big companies went to charities for the elderly. We should encourage companies to recognise the large area of real and growing social needs, admittedly less acute than those the public sector must meet, where a partnership between voluntary effort and private and statutory funds can be highly effective. Help in kind is also welcome; and, as we have already noted, there could be wider community use of firms' own sports facilities at times when they would otherwise be idle. In benefitting the local communities where their workforce lives and helping local people to help one another and themselves, firms may also hope to gain from improved morale and goodwill.

10. American experience suggests that companies may be readier to provide funds for voluntary projects in deprived areas through a well-managed and prestigious trust, local or national. Such agencies, acting as or with local development agencies, can create rivalry among companies to be seen as "community minded", and thus increase total giving and other forms of help, like secondments. Local enterprise trusts are already mobilising community minded firms in many areas to tackle local economic problems; but, to persuade the business sector to involve itself constructively with the voluntary groups, some broader based agencies, able to interpret the voluntary sector to business and vice versa, would be needed. Such trusts could also serve as a focus for other forms of local charitable fund-raising.

11. Many American firms have also successfully promoted charitable giving among their employees. Companies here could do more, through locally-based payroll deduction schemes, and grants 'matching' or 'challenging' workforce fund-raising efforts by the workforce.

12. The workplace could also be more of a focus for volunteering and voluntary service. Contrary to public belief, those in full-time work are the most, and those unemployed the least, likely to spend time on voluntary activities. Secondments can bring much needed management skills to voluntary bodies and social development agencies. Big employers and professional firms could be one source of financial, legal and technical advice for groups in less fortunate areas. Investment advice for small charitable trusts, P.R. advice on fund-raising and help in making trading activities profitable could boost charities' income. Firms could let local groups display information about their work, to attract support and volunteers. Schemes allowing employees limited time off for volunteering, especially as they approach retirement, have started in America and could be copied here. In the long run, a growth in the number of workers with a stake in the voluntary sector is likely to moderate union attitudes to the role of volunteers working with the statutory services. Promotion of volunteering by the working population could also reduce the risk that the Government's schemes for encouraging volunteering by the unemployed might damage the image of the altruistic volunteer. In time, it could lead to an increase in voluntary service by others in the community, especially the retired.

Fiscal benefits

13. The Chancellor's imaginative gesture in making the cost of secondments to charities tax deductible could help the voluntary sector, in partnership with business, to launch a campaign to stimulate charitable giving and help in kind towards charities meeting social needs. Fiscal benefits are, in general, indiscriminate in their efforts in comparison with grants, but they can influence the level of giving and form a significant part of total charitable income. V.A.T. has been a well publicised grievance, but on average accounts not for 15% but only 2% of the expenditure of charities: the Chancellor, for good reasons, has rejected any further concession. We should, therefore, consider other fiscal changes which offer incentives to charitable giving. A simple scheme for tax refunds on payroll giving could encourage regular giving by individuals. The system, found in American and most European countries, which permits companies to set charitable donations against their tax liabilities cuts across our own approach to charitable giving, but it encourages giving more than the present U.K. system and, with suitable safeguards, should be considered for adoption here. As a pilot scheme, a concession for the local trusts suggested in paragraph 10 might be considered. Further consideration could also be given to whether, at the right time, when computerisation could ease the burden on the Inland Revenue, a feasible scheme for tax deductible giving by individuals could be devised.

Charity law

14. There has recently been some further criticism of charity law. This is a difficult and controversial subject. We considered it in 1980 when we decided to do nothing. I do not recommend that we re-open these issues now. In the present context, charity law is important only because of the fiscal benefits that can flow from charitable status. Without distrubing charity law, however, it might be worth considering whether the same, or perhaps an increased range of, benefits could be made available equally to charities and some other voluntary sector bodies not registered as charities. I have in mind in particular voluntary, non-profit distributing bodies actively doing a socially useful job in local communities. Local community transport schemes are one example. We should, however, avoid creating a separate or overlapping category of bodies enjoying fiscal benefits different from those already available in relation to charities. That sort of change would only add to the current criticisms of charity law. Officials could be asked to consider the case for and against extending fiscal benefits to a defined range of voluntary bodies not registered as charities.

Recommendations

15. The Group is asked to:-

(i) endorse the objectives described in paragraphs 6 - 12 of this paper and the strategy of persuading the business and voluntary sectors to cooperate in a drive to increase the importance of the workplace in charitable giving and voluntary service;

(ii) agree that officials should give further study to ways of enabling local trusts to promote business involvement with the voluntary sector and stimulate charitable giving (see paragraph 10);

(iii) agree that the following longer-term possibilities for fiscal concessions should be considered:-

(a) - a simple scheme for tax refunds to charities on regular giving by payroll (see paragraphs 11 and 13);

(b) - making single gifts to charity by companies (including those close companies whose trading activities parallel those of public companies) tax deductible to the extent of 5% of their pretax profits (see paragraphs 8 and 13);

(c) - to pilot (b) above, making gifts by companies to the local business/voluntary sector trusts suggested in paragraph 10 tax deductible;

(d) - a study of the feasibility and cost of introducing tax relief for single donations by individuals, once the Inland Revenue is able to computerise personal income tax (see paragraph 13).

(iv) agree that officials should consider the case for and against giving fiscal benefits equally to charities and to a new category of non-profit-distributing organisations (see paragraph 14).

HOME OFFICE WW

5 April 1983

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FPG(83)13

5 April 1983

VOLUNTARY ACTION TO MEET SOCIAL NEEDS:

A GENERAL STRATEGY

Note by the

Home Secretary

This paper looks at the range of activities of voluntary and charitable bodies which attempt to meet social needs; argues that it is more realistic to think of them, in the main, as supplements to public services rather than as alternatives to them, and considers how we can best create the right climate for their growth. A companion paper looks at the scope for increasing charitable giving, especially to local voluntary activities.

2. First, we must be clear about what the voluntary sector is. It is not the same as the charitable sector, although there is some overlap. The voluntary sector is very large. There are nearly 159,500 registered charities; but there are many more local voluntary groups, many of which might qualify for charitable status even though they are unregistered. Some voluntary bodies receive large sums from public funds, but the essence of the voluntary sector is its independence of the State. The total income of registered charities, not counting churches, universities and other educational bodies, is about £3000 million. Adding in the income of smaller unregistered groups and the value of time given by volunteers could double or treble this. By no means all voluntary bodies are engaged in activities which we should approve: some may be politically motivated pressure groups. This paper is, however, solely concerned with those voluntary bodies which are concerned with meeting social needs.

3. The range of voluntary sector activities which meet social needs is vast. There are pre-school playgroups run by mothers; hospices, where professionals and volunteers work together to care for the dying. Bodies like Dr. Barnardos run large-scale professional services. The Samaritans and Marriage Guidance organisations use trained volunteers. Many small groups rely on mutual aid, eg. families with handicapped members helping one another, ethnic minorities running their own community centres, or tenants getting together to combat vandalism on run-down estates.

The voluntary sector shades into the "informal" area of family and neighbourly care. Volunteers may be individuals working in a school, hospital or "good neighbour" scheme, or (cf. some MSC programmes) teams of young people engaged on energy saving or environmental projects. A voluntary body may be totally independent in every sense, like Alcoholics Anonymous; or, like those which help to provide youth training projects, it may act as the agency for a statutory authority. Some organisations are almost wholly funded from the public purse - W.R.V.S. or N.A.C.R.O. are examples: some rely mainly on their charitable income; some can sell their services, whether privately or to a local authority; some have income from trading activities; a few now are community enterprises which plough their profits back to benefit the community.

Supplement or alternative?

4. This diversity and flexibility in the voluntary sector is part of its strength. We must not therefore try to impose any rigid pattern on it. Instead we should encourage voluntary bodies to do those things that they are best at doing. In the context of meeting social need, they are especially good:

- at bridging the gap between services and those who use them - like Parent Teacher Associations.

- at humanising and enhancing life in public institutions like hospitals and old people's homes and lending a hand in schools and other public services.

- at mobilising and training volunteers to do things no busy professional can have time to do.

- at reacting imaginatively to new or changing needs.

- at provising services for those, like drug addicts or ex-offenders, who are wary of public services.

- at finding new ways to combine income generating activities with mutual aid or benefit to the community.

5. But voluntary bodies have their limitations. They are only rarely convenient substitutes for statutory services. Even within one large body, it is not always possible for them to maintain consistent standards of service and, although their work can be vitally important, they are not accountable in the same way as public

bodies. Moreover, their geographical spread is patchy: flourishing groups may exist in one neighbourhood; another may have none. And, when voluntary bodies set out to provide alternatives to statutory provision on a large scale, they have a tendency to become bureacratic and inflexible themselves. They may be no more cost effective.

6. The scope for transferring responsibilities from the public to the voluntary sector was examined last year by an informal group of Ministers under Tim Raison's chairmanship. They commissioned a review by a Treasury-led Working Party. But its report saw little scope for long-term savings. It concluded that few voluntary organisations would be capable of coping with any substantial transfer of responsibilities: and that there would be a minimal cost advantage in their doing so. Transfer would call for large-scale agency arrangements with strict requirements on accountability. Standards of care would have to be monitored to safeguard vulnerable clients against the risk of cost cutting at their expense. All this would further reduce any prospect of savings. Further, voluntary bodies taking on what are now public responsibilities could risk losing much of the income they now receive from charitable giving. Both company and private donors are noticeably reluctant to give to work to which they feel they have already contributed through tax.

7. I conclude therefore that we should continue to regard voluntary efforts to meet social need as in the main a supplement rather than an alternative to public provision. We should gain no advantage from proclaiming an intention to expand the voluntary sector to replace particular public services; nor could we rely on voluntary bodies to fill, nationwide, gaps left by rolling back the frontiers of the state. Already there is some suspicion among voluntary bodies of our intentions - some fear of being treated as instruments of policy rather than as partners in meeting social needs. We should allay these fears, remove obstacles to partnership, and encourage statutory services of all kinds to work with and through the voluntary sector wherever and however it makes sense to do this. This pragmatic approach is more likely to encourage growth in the voluntary sector and new types of voluntary initiative which might, incidentally, relieve the load on statutory services, than is any overt political initiative.

What steps should we take to encourage voluntary effort?

8. We already rely heavily on the grant-aided voluntary sector to implement many of our policies. If we want the voluntary sector to do more for us than it does

already, we must consider whether we are prepared to inject additional resources into the voluntary sector; and what steps we could take to ensure that, whatever the level of resources we provide, these resources are used as effectively and efficiently as possible.

(i) Resources

9. The voluntary sector already receives about £140 million annually in grants from Central Government (exclusing M.S.C. grants and grants from non-departmental public bodies). It also gets about £200 million in fiscal benefits. But if it is to expand and to become more effective it will need more resources, particularly revenue resources. The need for extra revenue is particularly acute in areas of economic and social deprivation where the traditional voluntary sector is weak. But this additional funding need not necessarily come from Government. We should try to help voluntary bodies to find new ways of generating income - not least from charitable giving, where fiscal incentives can be important.

10. But there are circumstances in which fiscal incentives cannot generate new income and when grants may be essential. We must, therefore, be prepared to consider diverting more of our planned expenditure to the voluntary sector. Further, we must be prepared to consider giving the voluntary sector a share of any extra expenditure we may in future decide to devote to our social policies - where we believe that voluntary bodies can deliver services effectively. Norman Fowler has shown us the way with the £22 million worth of "central initiatives" for 1983/84 which he announced last November. No less than £6.5 million of this was for initiatives relying wholly on the voluntary sector and a further £11 million was for initiatives in which the voluntary sector will have the opportunity to play a part.

(ii) Approach to Grant-Giving

11. Almost all Departments have some dealings with voluntary bodies. Some have special schemes, like the D.H.S.S. with Opportunities for Volunteering, or the D.O.E. with the Urban Programme, which enable them to fund local projects. But all Departments should be able to make grants to national or regional voluntary bodies which work within the range of their Departmental responsibilities, where this makes sense in policy terms. Where a Department's power to do this is in doubt, it may need to be clarified.

12. We must use our grant giving powers wisely. Our aim should be to help voluntary bodies keep up-to-date with good practice and to organise themselves and the services they provide in a cost effective way. We should make sure that voluntary bodies are told exactly what they are expected to provide in return for their grant and reminded of how they will be accountable and monitored. Both contract or "purchase of service" funding for particular projects and "core" funding for basic costs and management are appropriate ways for Government to give grants to the voluntary sector. It will usually be appropriate to apply a cash limit approach to regular "core" funding of national organisations, but we must recognise that the development of new projects in support of our policies (eg., for the unemployed) may involve provision for additional management costs which may also need to be paid for.

13. Our grant giving should also recognise that voluntary bodies need to be able to plan ahead. Even if, within the constraints of Government accounting, the precise amount of a grant can only be worked out yearly, they need some indication of how long and to what extent they can expect help. Special programmes which try to involve the voluntary sector in implementing Government policies will be more effective if it is clear from the start that they will last for at least two or three years.

(iii) Voluntary and paid staff

14. We want to see a policy of partnership between statutory and voluntary services; but this will not work unless professionals throughout the public services learn to use, support and respect the contribution of volunteers and voluntary groups, without patronising them or taking them over. Learning to work effectively with the voluntary sector should therefore be part of the training of teachers, social workers, housing managers and others.

15. We must not think that the only truly voluntary body is one which relies entirely on volunteers. Many charities and voluntary bodies provide services which demand paid or even professional staff. This must be right. What parent would wish their handicapped child to be cared for or taught entirely by volunteers? The Spastics Society has a larger workforce than most public companies. Even volunteer using groups may need a paid organiser. And, with training and expert support, volunteers may be able to tackle social problems that would, otherwise, be beyond them.

(iv) Management skills and development capacity

16. The tasks many voluntary bodies are now tackling, under Government training

programmes and schemes for the unemployed, for example, call for management skills comparable to those needed in industry. But in many cases these skills are lacking. There are management weaknesses in many organisations, national as well as local. Smaller local bodies, particularly self-help groups in inner cities, need to learn how to manage their affairs in a less amateur way. Like small businesses, with which they have much in common, they need access to management and technical expertise. This is less of a problem for groups in a prosperous suburb where neighbours who happen to be lawyers, accountants, surveyors, etc., can usually help, but inner city groups will probably lack these informal helpers. Here, as in other respects, there is a role for Government in helping the voluntary sector to make itself more effective.

17. Some Councils of Voluntary Services have already shown what can be done. They have encouraged local businesses and professional firms to provide financial and other skills. They have also organised training for local voluntary workers in basic management. To give these developmentsa push in other areas, we should try to ensure that local "back-up" and development agencies like the Councils and volunteer bureaux are strong enough to provide for smaller groups simple training and advice as well as help with development, volunteer recruitment and collaborative planning with the statutory services. Some will need more resources, but a quite modest investment in the local voluntary sector's infrastructure (in which several departments have an interest) should pay off in a more effective, but still spontaneous, growth of voluntary effort to meet social needs.

Recommendations

18. The Group is asked:

(i) to agree that we should continue to regard the voluntary sector mainly as a supplement rather than an alternative to statutory services;

(ii) to recognise a special need to promote the health of the voluntary sector locally, and of the national bodies which service it;

(iii) to adopt the approach to grant giving suggested in paragraphs 10-12;

(iv) to invite officials, under the guidance of David Waddington's Ministerial Group

(a) to consider how the training of professionals should best be expanded to include training in working with volunteers and voluntary groups, and how the non-professional can be given the necessary skills to develop and manage voluntary groups and activities; and

(b) to explore ways in which basic training and support might be provided for small local voluntary groups (including the possibility of channelling funds to under-developed local "resource and development" agencies, including Councils for Voluntary Service and Volunteer Bureaux, to enable them to organise or provide this, and give impetus to developments).

HOME OFFICE WW
5 April 1983

CONFIDENTIAL

bc Wasserman
CPRS
FM

10 DOWNING STREET

From the Private Secretary

23 March 1983

Dear Tony,

As you know, the next meeting of the Family Policy Group is on 19 April. This is to let you know that the Prime Minister would like to discuss at that meeting a paper (or papers) by the Departments of Education and Science, and the Environment, on their proposals for extending access to council and school leisure facilities following the discussion at the last meeting of the Group. The Prime Minister hopes that that paper will include consideration of the proposal for a right of access to such facilities.

The Prime Minister would also be grateful if the forthcoming meeting of the Family Policy Group could also consider the paper which she understands is in preparation in the Home Office on the voluntary movement. She considers that it would also be convenient to take at that meeting the paper from the Departments of Education and Science, and Health and Social Security, following up the discussion of preparation for parenthood at the last meeting.

I am sending copies of this letter to the Private Secretaries to the Chancellor of the Exchequer, the Secretaries of State for Education and Science, Industry, Transport, Social Services, Employment, the Environment, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Minister for Overseas Development and to John Sparrow, and for information to the Private Secretaries to the Secretaries of State for Scotland and Wales.

Yours ever,

Tim Flesher

(TIM FLESHER)

Tony Rawsthorne, Esq.,
Home Office.

PRIME MINISTER

Family Policy Group

The next meeting of the Group is on 19 April. I have assumed that you will wish to take at that meeting the report by the Departments of the Environment and Education and Science on their proposals for extending access to council and school leisure facilities following the discussion at the last meeting. I have told both Departments that you will wish to see positive proposals including the consideration of the Chancellor's idea of a right of access to public facilities at that meeting. Is this correct?

Yes please

The Home Office have in preparation a paper on extending the voluntary principle which we ought to take soon. Are you content that we place it on the agenda for the meeting on 19 April? Yes It might also be convenient to take at that time the joint paper from DES and DHSS which was promised during the discussion of "preparation for partenthood" at the last meeting. Do you agree?

Yes - Chancellor

21 March 1983

CONFIDENTIAL

Home Aff

DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE, YORK ROAD, LONDON SE1 7PH

TELEPHONE 01-928 9222

FROM THE SECRETARY OF STATE

F E R Butler Esq
Principal Private Secretary
10 Downing Street
London SW1

17 March 1983

Dear Robin,

FAMILY POLICY GROUP: MEETING ON 9 MARCH

I am writing at my Secretary of State's request about the record of the meeting of the Family Policy Group held on 9 March (your letter to Tony Rawsthorne of 10 March).

Sir Keith has asked me to say that sub-paragraph (g) on page 2 is a misrepresentation of perhaps what he said but certainly of reality. Mr Antony Jay has simply indicated that his film - which he would still like to make - would not reach the people who most need to understand.

I am copying this letter to the recipients of yours.

Yours sincerely,

Imogen Wilde

MRS I WILDE
Private Secretary

Home A86;
FPG, P7-2

CONFIDENTIAL

File
bc Wasserman
Mowr
SW

10 DOWNING STREET

From the Private Secretary

14 March, 1983

Family Policy Group

I attach a paper by the Secretary of State for Transport on Transport and the Elderly (FPG(83)12).

I am copying this letter to John Kerr (H.M. Treasury), Imogen Wilde (Department of Education and Science), David Edmonds (Department of the Environment), Jonathan Spencer (Department of Industry), David Clark (Department of Health and Social Security), Barnaby ~~Clark~~ Shaw (Department of Employment), Mary Brown (Lord Privy Seal's Office), Alex Galloway (Chancellor of the Duchy of Lancaster's Office), Pamela Hilton (Overseas Development Administration), Richard Hatfield (Cabinet Office), Gerry Spence (CPRS), and for information to Muir Russell (Scottish Office) and Adam Peat (Welsh Office).

W.F.S. RICKETT

A. R. Rawsthorne, Esq.,
Home Office

CONFIDENTIAL

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DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

T. Flesher Esq
Private Secretary
10 Downing Street
Whitehall

14 March 1983

Dear Mr Flesher

FAMILY POLICY GROUP: THE ELDERLY

As we mentioned to you last week, our Secretary of State has prepared a paper on transport and the elderly which he would like circulated to members of the Family Policy Group for information.

As you suggested, I now enclose twenty copies of the paper for this purpose.

Yours sincerely

Sue Faulkner

MISS S I FAULKNER
Private Secretary

CONFIDENTIAL

TRANSPORT AND THE ELDERLY:
PAPER BY THE SECRETARY OF STATE FOR TRANSPORT

The Problem

1. Travel is a vitally important part of people's lives. People choose freely to devote a large proportion of their personal wealth to providing for their own mobility, and overwhelmingly the mode which they choose is the private car. Of a total users' expenditure on passenger transport of £24 billion in 1981, nearly £21 billion - 86% - was on private and business motoring. Sixty per cent of households in Great Britain in 1981 had at least one car. Since 1951, travel in private motor vehicles has risen over sevenfold, and passenger travel overall (excluding walking) by over 2½ times. In a very real sense, there has been a transport revolution.

2. However, the benefits of this revolution have not been evenly distributed throughout society. There are, and will always be, groups within society who do not or cannot own or have access to private cars. Elderly people figure prominently among these groups and will do so increasingly as the proportion of elderly people in the population as a whole rises.

3. Information from the 1981 Census and the Department's National Travel Survey give a broad picture of the nature and scale of the problem nationally. Only some 5% of the 9½ million people over pensionable age are in communal establishments. The vast majority live in independent households and must make their own travel arrangements. Yet car ownership is much less common in households in which elderly people live. Some 60% of households containing one or more pensioners were without access to a car in 1981, while for households consisting entirely of pensioners, the figure was nearly 75%. Three main factors lie behind this. Relatively low income is the first. Another is that a significant proportion of elderly people have never learned to drive. This problem is more significant for women than for men. Thirdly, as they get older, more people have

to relinquish their driving licences for medical reasons. The number of people holding driving licences falls rapidly with age.

4. With the passing of time, as personal affluence and the prevalence of car ownership increases, the overall proportion of elderly people with access to a car should rise. On the other hand, the problems of infirmity may assume greater significance as the proportion of very elderly people in the population increases. On balance, it is clear that lack of access to cars, and the isolation which that can cause, will continue to be a major problem for elderly people for the foreseeable future.

The Failure of Traditional Answers

5. Surveys indicate that 60% of all journeys by people in the 65 and over age group are for shopping and personal business, the rest being mainly social visits or day trips. Because fewer elderly people have cars, they are more likely to walk or to use public transport. Rail services are usually unattractive for the relatively short journeys involved, owing to the longer distances between stops and problems of access to stations. For elderly people therefore, public transport has traditionally meant the public stage bus - a pattern reinforced by the tendency for populations of elderly people to be concentrated in rural areas.

6. The problem is that stage bus services depend for their viability, on a wider market than just the elderly (who have always travelled less than the adult population generally). The rise of the private car has meant that much of that wider market has drifted away; a trend which shows little sign of easing. Over the past 10 years, demand for stage bus services (in terms of passenger journeys) has declined on average by 3½% a year (by 30% in total). Inevitably, operators have adjusted to this trend by curtailing services, but not to the same extent that demand has fallen. Stage bus mileage fell by 1½% a year

over the past decade (15% in total). Costs per passenger mile rose considerably. The average public subsidy per passenger journey (excluding concessionary fares) rose from about ½ pence to 10½ pence (ie 21 times) over the 10 years from 1971 to 1981, while retail prices generally rose by a little over 3½ times.

7. Conventional bus services remain vitally important to many elderly people, but there is no disguising the fact that, in effect, more and more money has been spent to provide for a dwindling number of passengers a level of service which is getting gradually worse. This position is not likely to improve, particularly if greater competition and keener pricing of services on more intensively used routes - which the Government is anxious to encourage - reduce the surplus of revenues available for cross-subsidy of unprofitable services. (Despite the massive growth in public subsidy in recent years, unprofitable bus services are still subsidised more by passengers using profitable services than by Government). Moreover, the impact of the decline in conventional bus services on the quality of life for elderly people has been exacerbated by the trend towards centralisation of shops and services.

8. Concessionary fares schemes, supported by local authorities and offering varying discounts on normal fares to certain groups of people, have undoubtedly buoyed up the use of conventional bus services by the elderly. There is strong public pressure for a national, standardised concessionary fares scheme, but that could be expensive. Expenditure on concessions already comes to over £200 million a year. A national scheme allowing off-peak travel at half fare would cost a further £100 million pa (assuming existing, more generous, local schemes continued), while free off-peak travel for all pensioners would cost over £400 million pa.

9. There is no question of injecting extra resources on this scale. Even if there were, the principle of concessionary fares schemes is open to objections. They seek to keep expensive services going by disguising their cost from users, and in doing so inhibit innovation and potentially encourage inefficiency. Moreover, they do not discriminate on grounds of need.

10. There is no reason to believe that car ownership has yet reached saturation point. The number of cars per 1,000 population is lower in Britain than in many western European countries, and growth in first and second car ownership is likely to encroach further on bus patronage. Over the past decade, rising subsidies and concessionary fares support have slowed the pace of contraction in bus services and thus the pace at which bus users, including many elderly people, have had to adjust. The only way to stabilise bus services at today's level would be to increase the level of subsidy substantially each year. There is no question of doing this, so the prospect is for some further decline in bus services at a rate related to growth in car ownership. In order to maintain and improve transport services for the elderly we must seek new solutions, more effectively adapted to the age of the car.

A New Approach

11. This Government came to power committed to encouraging new local transport initiatives, tailored to local circumstances and to modern needs. As quickly as possible, the Government took positive steps towards achieving this objective. Recent legislation culminating in the Transport Act 1980 swept away many barriers to innovation. A relaxation of the bus licensing regulations and a provision allowing non-profit, community based social car schemes to be publicly advertised has facilitated the use of unconventional modes of transport when conventional modes are no longer viable. Experimental areas allow shared taxis in designated areas.

12. It is in the realms of voluntary transport that the greatest progress has been made with the introduction of a number of community bus services, social car schemes and dial-a-ride schemes. In the Reading area, the Readibus scheme has enabled many elderly and disabled people who cannot use conventional public transport to become much more mobile. Four minibuses, fitted with tail lifts to accommodate wheelchairs, provide the service which can be booked by phone and is allocated on a first come first served basis. Monitoring of the Readibus service has shown that a significant number of elderly disabled people who had been housebound over long periods are now able to visit friends and relatives and to make shopping trips etc. My Department has produced a film about dial-a-ride schemes which is available on free loan to groups all over the country

who are interested in setting up services of this kind.

13. The National Bus Company, more usually associated with the operation of conventional bus and coach services, is playing a part in helping with the establishment of local bus schemes. The Company is offering advice and practical assistance both to those considering setting up schemes and, where schemes have already been established, in such fields as market research, scheduling, licensing, insurance, timetables, tickets, fares, publicity, driver training and vehicle maintenance. The Department of Transport has produced a booklet on Community Transport schemes which gives advice to groups considering setting up a community bus service.

14. In some rural areas in particular, even a community bus service may not be viable and here social car schemes (eg WI, hospital car schemes) can fill the gap. The chief advantage of a car service is its adaptability and low cost of operation so that arrangements can be made without undue difficulty to provide a door-to-door service.

15. Dial-a-ride schemes, which provide door-to-door services on demand, have perhaps had the greatest success in reaching those elderly people in the more urban areas who, because of physical frailty are either unable to get to a bus stop to use a scheduled service, or are unable to board an ordinary bus. Such services are usually provided by specially adapted vehicles capable of carrying disabled or wheelchair bound passengers. These services are expensive to run and, while a charge is generally made - avoiding any aura of charity - they still depend on assistance from local authorities. However, all dial-a-ride schemes established so far have revealed a considerable latent demand for this type of service.

16. The Government has made clear its support for local community based transport schemes by making an annual grant for a period of three years, beginning in 1982 with a maximum grant of £65,000, to a voluntary body - Community Transport. Community Transport has had wide experience in this field and the grant has enabled it to set up and run a small unit to provide a national source

of expertise and advice to groups wanting to set up locally based transport schemes and operate mini-buses.

17. In rural areas in particular wider use is being made of existing specialised transport services. For instance school buses and post vehicles may carry fare paying passengers during the course of their scheduled trips. Again this enables elderly people in the more remote areas to be more independent. In Lewes, East Sussex County Council are setting up experiments with a series of community schemes which bring the hospital patients', social services', school childrens' and shoppers' needs of an area into one integrated service.

18. The problem of access to vehicles for even moderately active elderly people is another point which the Department has sought to resolve, with the co-operation of bus manufacturers and operators. In some areas a new generation of buses is being introduced with split-level steps which effectively reduce the height between steps. Other experiments have been tried with retractable steps and kneeling buses which lower the level of the first step up from the kerb. Improvements inside vehicles give elderly people better hand-holds and thus greater confidence and safety when moving in the bus.

19. Decisions on the type and standard of services offered, and their financing, can only be taken on a local scale, in the light of detailed knowledge of the problems of a locality. There is no case for centralised decision taking (though there could perhaps be more co-ordination by County Councils of activity at District and Parish Council level). Nor is there a case for any major input of central government funds, distinct from those already made available in support of local authority transport expenditure generally.

20. The Government does however have a vital role to play in encouraging an innovative and demand-responsive approach by local organisations in general, and in fostering a climate in which new ideas are given a fair chance to prove their worth. Indirectly, pressure for change comes through continuing con-

straints on resources for subsidy for conventional services. More positively, the Government should endeavour to create the right regulatory framework. While the position is now much freer than when we took office, there may still be some unnecessary barriers. We should seek to identify these, with the help of local advice, and to make any necessary changes.

21. Information on the full possibilities and on the innovations already working both at home and abroad needs to be widely disseminated - both to potential operators and users as well as to voluntary organisations and the local authorities. If we can get our message across sufficiently widely, pressure for innovation should gather its own momentum and resistance by some local authorities and established transport operators may crumble. This could involve more publicity nationally and locally, and a continuing round of visits by Ministers and officials and regional seminars to encourage the exchange of ideas.

22. However, our basic message here, as elsewhere in social policy reform must be that these new approaches are better tailored to those who really need help than the old more centralised and expensive methods. As always, of course, this is not a message the vested 'welfare' interests, or the vested transport interests, wish to hear.

CONFIDENTIAL

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

Chancellor of the Duchy of Lancaster
and
Paymaster General

10 March 1983

Dear Robin,

FAMILY POLICY GROUP

We spoke briefly. Could you and copy recipients please note that the Chancellor of the Duchy should be added to the list of those present at the meeting on 9 March?

I am copying this letter to the recipients of yours.

Yours ever,

Alex Galloway.

A K GALLOWAY
Private Secretary

F E R Butler Esq
10 Downing Street

CONFIDENTIAL

Home Affairs

10 DOWNING STREET

From the Private Secretary

10 March 1983

Dear Janice,

Family Policy Group

The next meeting of the Family Policy Group will be at 0930 on Tuesday 19 April at No.10. It will last for one and a half hours.

I am copying this letter to John Kerr (HM Treasury), Imogen Wilde (Department of Education and Science), David Edmonds (Department of the Environment), Jonathan Spencer (Department of Industry), Richard Bird (Department of Transport), David Clark (Department of Health and Social Security), Barnaby Shaw (Department of Employment), Mary Brown (Lord Privy Seal's Office), Alex Galloway (Chancellor of the Duchy of Lancaster's Office), Pamela Hilton (Overseas Development Administration), Richard Hatfield (Cabinet Office), Gerry Spence (CPRS), and for information to Muir Russell (Scottish Office) and Adam Peat (Welsh Office).

I would be grateful if you could let me know if your Secretary of State is unable to attend.

Yours sincerely,

Caroline Stephens

Miss Janice Fairbairn
Home Office.

CONFIDENTIAL

SUBJECT

cc Marks 2

Home Affairs Sub

bc. Mount

Wasserman (CPRS)

10 DOWNING STREET

From the Principal Private Secretary

10 March 1983

FAMILY POLICY GROUP

There was a meeting of the Family Policy Group on Wednesday, 9 March 1983 at 0900 hours. The Prime Minister was in the chair; the Chancellor of the Exchequer, the Secretaries of State for the Home Department, Education and Science, Transport, Social Services, Industry, Employment and the Environment, the Lord Privy Seal, the Minister for Overseas Development, Sir Robert Armstrong, Mr. Sparrow, Mr. Mount and Mr. Wasserman were present.

The meeting considered memoranda by the Secretaries of State for Education and Science and for the Social Services and by the Central Policy Review Staff on preparations for parenthood. In discussion the following points were made:-

(a) This was an area in which it would be desirable to work through, and build on work already done by, voluntary organisations.

(b) Help was needed not just with preparation for parenthood but also with support in parenthood. The late Dr. Mia Pringle's proposal for self-help family centres might be worth further consideration. The National Children's Centre had been running a phone-in scheme on local radio where parents could ring in if they felt desperate: this facility might very well help parents who would be reassured by the protection of anonymity.

(c) The Home Secretary had been working on arrangements for bringing the probation service, the police, the social services and voluntary organisations into closer co-operation in dealing with the problems of unruly children and thus seeking to prevent crime. These arrangements would need to be tied in with anything which emerged from the present meeting.

(d) One of the difficulties was that children did not now perceive parents and teachers as standing together. It would be desirable to develop greater coherence of approach between parents, teachers and the social services in their attitude to the children in their charge. The Home Secretary's initiative would contribute to this.

/(e)

CONFIDENTIAL

(e) Getting more owner-occupiers back into inner cities - as in the docklands area of London and as in Toxteth - would make a contribution to this problem.

(f) It was for examination whether school curricula could provide more opportunities for educating and influencing children in this area, not so much through specific courses as through general courses on health education and domestic science.

(g) Mr. Antony Jay was not now keen to embark on television films in this area, since he doubted whether they would reach the real problems.

The Prime Minister, summing up the discussion, said that there was general agreement that preparation for parenthood was not an appropriate subject for a major political and public campaign. The right course would be to work as much as possible through the voluntary organisations with specific schemes and proposals. The voluntary organisations would probably need some financial help in order to engage the necessary professional support. It was possible that funds already available through the Community Programme and other programmes could be used for these purposes. The proposals in the paper by the Secretary of State for Health and Social Services provided a useful starting point for further work.

The meeting invited the Secretary of State for Social Services, in consultation with the Home Secretary and the Secretary of State for Education and Science, to bring forward an agreed plan of approach, concentrating on the voluntary organisations.

The meeting then turned to the paper by the Secretary of State for Education and Science on the use of school facilities outside school hours and the paper by the Secretary of State for the Environment on sport and recreation. In discussion there was general agreement upon the need for school premises to be more readily available outside school hours for evening activities of the kinds described in the papers. There were likely to be objections from head teachers and from school caretakers; it might be necessary to embark upon a public campaign to change attitudes on this matter. One way by which such a change might be brought about would be to create a right of access to publicly owned school premises out of school hours, subject to suitable conditions of use so as to protect the schools. It was not just a matter of premises: activities in schools outside school hours, particularly by children and young people, needed to be carried on under supervision, if they were to be beneficial and were to avoid the risk of damage to the schools. A public campaign might well bring forward volunteers who would be prepared to supervise such activities; one possible source of volunteers might be university students on vacation who found it difficult to get vacation jobs at present levels of unemployment.

/Nor was

Nor was it only school facilities of which use might be made: industrial firms might be invited to make their sports grounds available, and Civil Service sports facilities might also be used.

The Prime Minister, summing up the discussion, said that there was general agreement upon the need to encourage and increase the use of school facilities, industrial and Civil Service sports grounds and other such facilities outside the hours when they would be used for their primary purposes, so as to provide centres for activities by children and young people. Such activities would need to be supervised; consideration would need to be given to how volunteers could be attracted to this kind of work. The discussion had identified various problems and blockages to developments of this kind. In further work attention should be concentrated on children and young people; the elderly had less priority for these purposes.

The meeting invited the Secretaries of State for Education and Science and for the Environment to arrange for a working group to identify and analyse the problems and blockages that were inhibiting developments of the kind proposed and to make recommendations for how those problems and blockages might best be dealt with, and to report back to a further meeting of the Family Policy Group.

I am sending a copy of this letter to John Kerr (HM Treasury), Imogen Wilde (Department of Education and Science), Richard Bird (Department of Transport), David Clark (Department of Health and Social Security), Jonathan Spencer (Department of Industry), Barnaby Shaw (Department of Employment), David Edmonds (Department of the Environment), Mary Brown (Lord Privy Seal's Office), Alex Galloway (Chancellor of the Duchy of Lancaster's Office), Pamela Hilton (Overseas Development Administration), Richard Hatfield (Cabinet Office), Gerry Spence (CPRS), and for information to Muir Russell (Scottish Office) and Adam Peat (Welsh Office).

R B

A.R. Rawsthorne, Esq.,
Home Office.

Home D88

PRIME MINISTER

FAMILY POLICY GROUP

Attached are your papers for the meeting tomorrow. These comprise:

Flag A	A paper by Ferdie.
Flags B and C	Papers by the Secretaries of State for the Environment and Education and Science on the use of school facilities outside school hours and other recreational facilities.
Flags D, E and F	Papers by the Secretaries of State for Education and for the Social Services and by the CPRS on parenthood.

Since the subject of sport and recreation is rather more self-contained than that of parenthood, I suggest that you take those two papers first. Neil Macfarlane is attending for that item.

TIM FLESHER

8 March, 1983

CONFIDENTIAL

8 March 1983
POLICY UNIT

A

PRIME MINISTER

FAMILY POLICY GROUP MEETING: 9 MARCH

Use of School Facilities Outside School Hours (DES), Sport and Recreation (DOE)

The DES reports that, despite consistent encouragement by government, the use of school facilities outside school hours is still dismally low. During the summer holidays, only 16% of school playing fields were in use, and only 25% of indoor sports facilities. Many school football pitches are in far better condition than First Division grounds because they are so rarely used.

Yet these facilities were provided by public funds. In many areas, the school buildings and sports facilities are the largest community investment since the war. The public ought to have a right of access. Young and old alike ought to be able to use these facilities at any time outside school hours.

The first constraint is finance; or to put it more bluntly, the overtime of caretakers and security guards. As David Hobman, the Director of Age Concern, said to me last week: "It's the school caretakers who make social policy in this country."

How do we break through this obstacle? By setting up a volunteer corps of "Auxiliary Caretakers"? The DoE (paras 6-9) is supporting a Voluntary Sector Working Group to increase use of school facilities; it also envisages funding a new voluntary body to take the lead in organising play facilities under the inspiration of the National Playing Fields Association.

The prime problem seems to have changed from the time when the Duke of Edinburgh gave such an impetus to the Playing Fields movement. Today, the problem is less the shortage of pitches than the shortage of supervisors to deter vandals and meet the requirements of insurance and health and safety laws.

Do we have to accept the DES contention 4(vi) that caretakers and security guards "are well placed to drive a hard bargain because their duties and remuneration are closely defined in national, regional and local agreements"? On the contrary, caretakers' overtime is a well-known scandal, particularly in some London boroughs where some caretakers have been clocking up £15,000 a year

/or more

CONFIDENTIAL

or more, merely by being on the premises after school hours (particularly in cases where they enjoy a grace-and-favour house on those premises).

Surely it would be reasonable to stipulate a standard overtime ceiling and provide that responsible volunteers would take over duties beyond a certain maximum number of hours.

If this initiative could be launched nationally under the aegis of the National Playing Fields Association, it would have a moral force which both the trade unions and local educational authorities would find it hard to resist, particularly if Mr. Macfarlane enjoys success in persuading big companies and nationalised industries to open up their facilities.

Preparation for Parenthood (DES, DHSS, CPRS)

These are all thoughtful papers. Governments are right to be tentative in this difficult area. And Norman Fowler makes the good point that voluntary organisations are generally much freer than statutory organisations to pioneer new approaches.

Yet since the state makes education compulsory and itself provides out of public funds 95% of the schools, the state explicitly takes on some responsibility for preparing children for adult life. And it is difficult entirely to exclude parenthood and family life from that preparation.

In practice, schools in Britain have almost every conceivable form of course to prepare their pupils for parenthood, ranging from nothing at all, through the most mechanistic forms of sex education, to more rounded courses including marriage and the care of babies, as well as denominational schools which may give instruction in the Christian or Jewish view of marriage.

As far as the government is concerned, The School Curriculum 1981 certainly specifies preparation for parenthood and family life as essential components in any curriculum. But the DES itself plays very little part in suggesting, let alone prescribing how these components should be provided. HM Inspectors merely report on what is being provided.

/The only

The only government agency which does actively help schools with these components of the curriculum is the Health Education Council, which is entirely funded by the DHSS. Yet this help is provided in the context of providing an overall programme for the health of the community. Thus preparation for parenthood has to take its place in a programme concerned with diet, alcohol abuse, smoking and so on. Inevitably, it tends to boil down to a fairly mechanistic kind of sex education which concentrates on the physiology of sex and the means of contraception, with moral and emotional considerations as pious afterthoughts. In some cases, it is a good deal worse than mechanistic and actually promotes a callow relativism in sexual matters which many parents abhor and which is therefore objectionable on democratic grounds as well as on moral grounds (eg the notoriously unbalanced book list put out by the HEC).

We now have a new Chairman and Director-General at the Health Education Council. But even a much improved DHSS-funded programme is likely to be materialistic and physiological in its bias.

It is quite easy to imagine an alternative type of education for family life, which would include the practical, emotional and moral questions. Many schools are already doing their best to offer such an alternative course, although unfortunately I am told that the best courses tend to be designed for girls only and often for the less academic girls at that.

The difficulties of marriage and parenthood, the social consequences of marriage breakdown, the nature of the Christian tradition in relation to marriage and the family - these and other relevant subjects can be described quite straightforwardly, without counter-productive preachiness and without interfering with freedom of conscience or the delicate balance between the DES and the local councils.

Some questions worth considering are:

i. Should the DES, possibly through the new Curriculum Development body, study the possibility of a curriculum development programme for preparation for parenthood?

ii. Should the DES incorporate in such a programme the relevant activities of the Health Education Council?

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ANNEX

Since writing this note, I chanced upon the following extract from an article by Dr Mia Pringle (who died last month). It was reprinted in one of the many interesting pamphlets and books on family and individual responsibility which were sent to this office as a result of the Guardian leak (it is an ill wind etc):

"Sex education should never have been isolated as a specific subject. To my mind it is irresponsible to provide information about the mechanics of sex - conception, birth, VD and contraception - without providing the broader context of human development from birth to adulthood, with special emphasis on relationships.

Young people themselves certainly want a greater emphasis in schools than is usually placed on family life and the care of children. This is equally true of boys and girls - nearly 60 percent of 16-year olds in a national study felt a need to know more about these aspects. Similarly, I found recently that both sixth formers and alienated non-achievers were fascinated to learn about child development.

The way forward would be to make preparation for parenthood a core curriculum subject at school for boys and girls. After all, the vast majority will become parents.

It would mean abandoning the present fragmentation of home economics, political education, civics, sex education, child care and health education. Though all have a bearing on human development, none provide the necessary comprehensive framework.

Of course, considerable learning will have taken place already in their own families and in their relationships with their peers; as well as by way of books, magazines and the media. But such knowledge needs to be presented in a more systematic way.

To learn about the reasons why we feel and respond as we do, and about the complexity of human relationships, is surely a basic pre-requisite for adult maturity. Without it, health, political and sex education all lack a secure base.

Within such a coherent framework, important issues can be present without "preaching", "brainwashing" or boring pupils."

Mia Kellmer Pringle, 1980,
quoted in "Practical Partnerships"
by Joan Kidd of Family Network.

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CONFIDENTIAL

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

8th March 1983

Dear Tim

FAMILY POLICY GROUP: PAPER BY SECRETARY OF STATE FOR ENVIRONMENT ON SPORT AND RECREATION (FPG(83)10)

I attach a table which should have been attached to the Annex to the above paper circulated yesterday. My apologies for its omission.

Copies go to Tony Rawsthorne (Home Office) John Kerr (Treasury) Imogen Wilde (DES) David Saunders (Department of Industry) Richard Bird (Department of Transport) David Clark (~~DHP~~) DHSS Barnaby Shaw (Department of Employment) Mary Brown (Lord Privy Seal's Office) Alex Galloway (Office of the Chancellor of the Duchy of Lancaster) Pamela Hilton (Overseas Development Administration) Richard Hatfield (Cabinet Office) and Gerry Spence (CPRS).

Yours sincerely

Roger Bright

R BRIGHT
Private Secretary

Tim Flesher Esq

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FAMILY POLICY GROUP

PARENTHOOD

Note by the Central Policy Review Staff

Introduction

Both the paper by the Secretary of State for Education and the paper by the Secretary of State for Social Services cover two related issues :

- the quality of parenting
- the question of teenage pregnancies

2. The essential questions for Ministers are :

- what is the proper role of Government in both these areas?
- how should policy in these areas relate to the Government's central aims of increasing personal responsibility and the role of the family?

Preparation for Parenthood

3. There is certainly scope for improving the quality of parenting and Government has a role to play through the provision of education and training. But what is the evidence pointing to a "sharply rising trend" in irresponsible parents (para 2 of the Secretary of State for Education's paper)?

4. Can parenting be improved by training? There are many ways of bringing up children satisfactorily. Research suggests that success is based on certain common factors :

- affection
- stimulation, particularly direct conversation with the child
- consistency of discipline
- good supervision
- one good relationship with an adult, preferably a parent, at times of stress

5. Conversely there are factors which tend to carry a risk of adverse effects especially if several stresses are found together :

- apathy
- parental discord
- deprived social circumstances
- frequent hospital admissions
- large families
- parents' loneliness
- extremes of discipline

6. Not all of these factors are within the parents' control. There is a limit to what can be done in advance. But we believe that there is scope for preparing the ground for parenthood from school onwards.

7. Some possible approaches, in addition to those in the Secretary of State for Social Services' paper are :

- since most adults will spend more time with the family than elsewhere, Ministers might consider whether all school children should not spend some time learning about homemaking with some emphasis on caring for children - with practical experience - and about human relations. This would be as relevant to their future lives as, say, history.

- is there scope for more training in parenting with practical experience in the Youth Training Schemes for both boys and girls?

- could receipt of maternity benefits be conditional on one or both parents attending lessons on parenting (as at ante-natal classes in France)? Might preparation for parenthood be arranged for times when both future parents would be able to attend?

- could the voluntary movement encourage classes or self-help groups (with attendant creches) for <u>new</u> mothers?

<u>Teenage pregnancies</u>

8. Many teenagers make good parents but the papers by the two Secretaries of State imply that an essential component of better parenting is delayed

parenthood. Teenage pregnancies are associated with substantially increased risks for mother and child - an increased rate of physical, behavioural and educational problems. Teenagers may be physically capable of producing children but they may not be emotionally equipped to bring them up. Also many of the children conceived by teenagers are not actually wanted.

9. First some facts :

- the proportion of girls aged 15-19 becoming pregnant is lower than in the early 1970s (though the most recent trend is slightly upwards).
- the rate of pregnancies of girls under 16 shows a similar trend.
- the proportion of girls aged 15-19 actually having babies has dropped even further because of the number of abortions.
- 1 in 25 girls aged 15-19 conceive outside marriage of which nearly 40 per cent have abortions.
- 1 in 250 girls under 16 conceive, of which nearly 60 per cent have abortions.

10. Three factors leading to teenage pregnancies :

- earlier physical maturity means that a high proportion of teenagers now engage in premarital sexual activity. But the evidence suggests that the vast majority of the young continue to stress the traditional values of love and friendship.
- there is some evidence that girls from severely unhappy, stressful, poor quality homes see pregnancy as the only way of securing a home separate from their parents, or of obtaining an answer to a need for some emotional attachment.
- inadequate knowledge about birth control plus some recent worries about the Pill. The older middle class girls are the most likely to use contraceptives. Young working-class boys without stable relationships are the least likely; working-class children tend to learn what they know about contraception from their peers and not from parents or teachers.

11. Some adults consider teenage sexual activity as something undesirable in itself, quite apart from the undesirable consequence of unwanted pregnancies. Some adults believe that the availability of contraception and abortion through the National Health Service has itself been a spur to increased teenage sexual activity. In fact the evidence is patchy. The rate of premarital conceptions among teenagers did drop sharply after the introduction of the free NHS contraception service in 1974. Free abortions in 1967 reduced the rate of unwanted births although the rate of premarital conceptions continued to rise until the early 1970's. There is no present evidence of the effect of these developments on sexual activity.

12. Questions for Ministers fall into two groups representing two different views of the role of Government :-

(a) - should Government take a moral stance and try to change the moral climate and so reduce the level of teenage sexual activity?
- but would Ministers be concerned at the risk of more unwanted babies if this involved curtailing the availability of NHS contraceptives and abortions?
- instead, would it be better to seek to discourage sexual activity through e.g. the route advocated in the Health Education Council advertisement ("no" is still the most effective birth control technique)?

(b) - instead of taking a moral stance itself should Government seek to encourage young people through education (including education about the emotional as well as the physical aspects of sexual relationships) at home and at school to come to their own moral judgement based on a better informed assessment of their relationships and responsibilities?
- would such action reach the most vulnerable and disadvantaged sections of the population or would it be necessary also to embark on a more open promotion of birth control, even if this risked the impression that Government was condoning a greater degree of sexual activity?
- would more education about parenthood, for boys as well as girls, presenting a realistic (but perhaps not a "scaring") picture help to develop more responsible attitudes among the young (see paragraphs 6 and 7 above).

13. A more detailed point arising from para 10:

- could Local Authorities with surplus housing help reduce one type of unwanted pregnancy by providing young people from a bad family environment with housing without their having to produce a child first?

7 MARCH 1983

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FPG(83)10

FAMILY POLICY GROUP

SPORT AND RECREATION: PAPER BY THE SECRETARY OF STATE FOR THE ENVIRONMENT

1. Participation in sport and recreation engenders positive attitudes, self-reliance, self-discipline and team spirit - especially amongst young people; it also fosters a sense of community identity in all age groups. On that premise, this paper considers current policy and provision for sport and recreation in the local community. The Annex gives details of current funding.

Provision of Facilities

2. We have all seen a great increase in facilities, mainly for indoor sports, over the past 30 years. Most major towns now have a multi- purpose recreation centre. Valuable though these large centres are, high travel costs - and sometimes entrance fees - limit their accessibility and use. They need to be supplemented by more local, small-scale facilities, sufficient to accommodate a limited range of activities and to provide a community focus. The Sports Council, which we grant-aid, is therefore providing for needy areas, by 1987, 60 standardised, low cost (£0.5 million) sports halls, in partnership with local authorities, construction of the first one has now begun in Toxteth). Accelerating this programme would obviously be desirable but would require extra public resources; the proposed locations will not readily attract funds from the private sector. There may be scope for voluntary groups to help run the facilities, thus reducing revenue costs.

3. We have also started to provide small-scale facilities like kick-about areas and artificial pitches in Liverpool, under our Merseyside Sports Initiative. We launched a special £ for £ scheme to encourage donations from the private and voluntary sectors for sports facilities and equipment. The scheme looks a success; an initial allocation of £1 million had to be raised to £1.25 million to match the amount from the private and voluntary sector. Neil Macfarlane has asked the Sports Council to initiate similar schemes (each of £0.2 million) in Newcastle and Bristol. These are now getting underway and he is looking for similar schemes in other areas.

4. Through schemes of this kind we get substantial community benefits for a relatively low outlay. Any extra funding provided could be spent and would show an early return.

Existing Facilities - Intensification of Use

5. Many facilities in public and private ownership are under-used. Neil Macfarlane has begun a campaign, with CBI support, to persuade companies and organisations to allow community use (perhaps just at certain times, like weekends) of their halls and fields. The response from the public sector already looks encouraging; and Neil is now approaching the top 100 companies. Where community use looks feasible, voluntary sector clubs are put into direct contact with individual companies/organisations.

Dual-Use of Schools

6. Together with DES we have urged the 105 Local Education Authorities to arrange community access to school facilities. We have no power of direction but must continue to persuade those where progress is slow. A survey completed last year showed that most LEAs are in favour of dual-use; and we are now supporting a voluntary sector working group, which is trying to bring user pressure to bear at the local level. The group is assembling notes on best practice and ways to overcome management problems, which will be used to help and encourage the slower authorities.

Motivation

7. Motivation is also required. Whilst participation has grown markedly since the War, it is still somewhat less than 50% of the population that engages in active recreation. The proportion is much less amongst the elderly (see below), minority groups and the under-privileged. We are supporting Sports Council programmes in London and the West Midlands which train leaders and motivators to encourage greater involvement in sport and recreation, particularly by the young and in inner-city areas. The programmes are going well. They are not expensive but we do not at present have the resources to extend them to other areas. The scope for voluntary agencies to provide leaders is being explored.

Children's Play

8. In the 5-16 age range, young people develop lasting attitudes and form social behaviour patterns. They are therefore a crucial target group for social and family policies. Organised children's play provides a training ground for leadership and organising skills. The voluntary sector, funded partly by central and local government, has traditionally taken the lead in establishing play schemes and training play leaders. Leading play organisations have been lobbying the Government to recognise the importance of children's play for some time. Early Day Motion 363, sponsored by the National Playing Fields Association and calling for a specific Ministerial focus, attracted more than 250 signatures. The Prime Minister has now agreed that this Department should take the lead, and I have asked Neil Macfarlane to take on this responsibility.

9. More than ever before there is a need for organised play facilities and for the committed individuals to create and run them. A substantial national effort is required, led if possible by the voluntary sector. Unfortunately, none of the existing voluntary organisations is sufficiently strong and vigorous to play the lead role required. They recognise this. With their support, consideration is being given to ways of establishing and funding a new voluntary body to meet this important need.

The Elderly

10. The elderly must also be an important target group for sport and recreation policies. They benefit of course from any increase

or improvement in facilities, especially in the local community. (Travel is a disincentive). There is special provision for the elderly in many sports centres, eg concessionary rates, activities like carpet bowls (which is booming) and movement and dance. For some sports like badminton special sessions for the elderly are available. We must look for more provision of this kind. We must also encourage the elderly to participate; the Sports Council (whose motto is "Sports for All") recently launched a successful scheme, called 50 Plus, designed to encourage those approaching and in retirement to take up new leisure activities.

ANNEX

CURRENT FUNDING FOR SPORT AND RECREATION

Government funding for sport and active recreation is available through the Sports Council and the Urban Programme. In total it amounted to something over £45m in 1982/83. This figure does not of course include local authority expenditure.

The Sports Council was established by Royal Charter in 1972 and its functions include encouraging participation in sport through the provision of facilities. The Council gives financial support to local authority and private and voluntary sector schemes designed to increase the opportunities for people to take part in sport.

The Sports Council receives annual grant-in-aid from the Government. This has been increased from £15.2m in 1978/9 to £22.8m in 1982/3. In addition an extra £1m was made available by the Government under the Merseyside £-for-£ scheme. An extra £4.25m has also been allocated in this financial year for the provision of, for example, kick-about areas, and multi-purpose artificial surfaces in urban areas. Provision of £27.03m has been made for the financial year 1983/4. This includes a further £1m for Merseyside and £400,000 for £-for-£ schemes in Bristol and Tyneside.

Local authority sport and recreation projects of all kinds are eligible for grant-aid under the various facets of DOE's Urban Programme. The attached table sets out, by region, the total value of schemes approved for funding in 1982/83. All UP schemes require the support of the relevant local authority to be eligible for assistance although many of them are actually implemented by voluntary groups. UP resources are limited and sports projects must compete with other economic and environmental proposals. Individual local authorities determine their own priorities in deciding which bids they will submit to the Department for approval. There is, therefore, only limited scope for an increase in support for sport related schemes from this source by central Government.

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SPORT AND RECREATION PROJECTS FUNDED UNDER THE URBAN PROGRAMME IN 1982/3:

REGION:	No of Projects	COST (£000's) CAP	REV	TOTAL
NRO : Partnership	15	458	556	1,014
Prog. Authorities	27	520	234	754
Total	42	978	790	1,768
NWRO* Partnerships	95	3,850	284	4,134
Prog. Authorities	21	401	-	401
Total	116	4,251	284	4,535
YHRO: Prog. Authorities	48	844	146	990
WMRO : Partnership	52	924	483	1,407
Prog. Authority	15	251	100	351
Total	67	1,175	583	1,758
EMRO : Prog. Authorities	22	1,697	28	1,725
GREATER Partnerships	35	2,177	156	2,333
LONDON : Prog. Authority	8	129	135	264
Total	43	2,306	291	2,597
TRADITIONAL Circular 22	88	1,941	949	2,890
URBAN Approvals				
PROGRAMME* Additional				
Approvals'	26	1,277	-	1,277
Total	114	3,218	949	4,167
TOTAL Partnerships	197	7,409	1,479	8,888
Prog. Authorities	141	3,842	643	4,485
Trad UP	114	3,218	949	4,167
Grand Total	452	14,469	3,071	17,540

Note : * Excludes committed projects inherited from previous years.

' Additional project approvals to mop up capital underspend in 1982/3.

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FPG/83/9

FAMILY POLICY GROUP

PREPARATION FOR PARENTHOOD

Paper by the Secretary of State for Social Services

Poor parenting is more widespread than any of us would like. It can lead to poor educational attainment and to crime - although there is no automatic link - and certainly a great deal of unhappiness. However, as the Secretary of State for Education says, the crucial question is whether Government should try to improve the position and, if so, how? In reaching a conclusion on that we should at least take into account the following points:

(1) There is no single "right" kind of parenting and we know more about what can go wrong than ways of being right. There is still considerable uncertainty as to what is good practice in child rearing and parenthood.

(2) If we are to tackle the problem of poor parenting then we need to look at both preparation for parenthood and support for parents. When parents fail in their task it is not usually because they do not know what good parenting is but because they cannot cope with the many external pressures and demands on them. Ideally what is needed in that situation is a readily available informal support and advice system that parents can turn to when they need it.

(3) It is extremely difficult to generalise about "problem" groups. For example, we know that the divorce rate in 1961 was two per thousand married persons and that by 1980 this had increased to twelve per thousand. As many as one in three marriages today will probably end

E.R.

in divorce. 59 per cent of divorces involve dependant children and in 1980 40,000 of them were under five years old. But divorce in itself is not necessarily an accurate indicator of social handicap in children. Many single parents are extremely good parents while in any event something like 80 per cent of those divorcing under the age of thirty will remarry within five years.

(4) Not all the figures by any means support a conclusion that there has been an increase in poor parenting or a sharply rising trend of "irresponsible parents". For example, the proportion of children in care in the population appears to have held level from 1952 to 1970, then experienced an increase during the 1970s which tailed off towards the end of the decade with a fall in 1981. The annual number of admissions each year has fallen from 50,000 in 1973 to 43,000 in 1981. The number of children placed in care by parents has fallen from 40,000 in 1974 (82 per cent of admissions) to under 29,000 in 1981 (67 per cent of admissions). Two other interesting figures are that the rate of births per thousand women under the age of twenty has dropped from 42 in 1970 to 26 in 1980 (although there has been an increase in illegitimate births between 1979 and 1980). While the rate of births per thousand women under the age of sixteen has dropped from 2.2 in 1970 to 1.6 in 1980.

I would suggest that all this points to our adopting a cautious approach. We should develop existing successful schemes - rather than adopt dramatic (and highly controversial) new tactics like "scare" films on maternity. We should consider both preparation for parenthood and support for parents. In all our policies we should remember the contribution that can be made by voluntary organisations who are generally much freer than statutory organisations to pioneer new approaches and to try out new ideas. I would therefore suggest that our policy should include:

(i) The development of community based self-help family centres, as suggested by Mia Pringle. The centres would be multi-purpose: they would provide a meeting

E.R.

point for purely social and recreational purposes; they would enable parents to offer support to each other; and they would make available advice counselling and when need be referral to specialised agencies. In short they could be used as a source of help and support without automatically labelling parents as having failed in some way or as being problem cases. The establishment of such self-help centres would be a natural role for the voluntary sector.

(ii) We should concentrate on schemes likely to reach parents at risk because of their unsupported life, extreme youth, or history of poor success with previous children. Again the voluntary sector has an important part to play. The kinds of schemes to develop include:

Playgroups places increased from 263,000 in 1972 to 365,000 in 1981. Groups now total nearly 15,000. Through national associations the DHSS and DES have been working jointly to push the playgroup movement into the more deprived areas.

Home start schemes. These were started in Leicester in 1973. They consist of teams of trained volunteers, themselves mothers, who visit families with young children who are experiencing difficulties. Professional back-up is provided by the statutory services when required. There are currently something like twenty-five home start type schemes throughout the country.

Child minding. The number of registered child minders is almost 43,000 and the number of children minded is just over 100,000. We estimate that the number of children being minded by unregistered minders is a further 100,000. We aim here to improve the status, training and support of child minders by developing the work of the National Child Minding Association.

E.R.

Health visitors who have increased by 38 per cent between 1971 and 1979. The scheme mentioned by the Secretary of State for Education in Southampton was probably an early scheme of home visiting to help with family planning advice. 16,000 women were so visited in 1981.

Ante-natal classes and the involvement of both parents in such classes.

(iii) The Health Education Council - which now has a new Chairman and a new Director General - has a role in seeking to get a general message on preparation for parenthood across to both young people in schools and further education and the youth service and also parents and prospective parents.

There is one last point. Clearly there are difficulties in insisting that preparation for parenthood should be taught in schools if teachers are unenthusiastic and the children are inattentive. However, it was significant that the conference organised by the National Childrens Bureau on preparation for parenthood agreed that it was desirable that all children should receive education on this at some stage in their school career. It would be possible for teachers to be supported by health professionals including trained health education officers. The best approach would probably be to go for a wide objective: keeping yourself fit, being sensible about approaching parenthood, learning about children's development, and health education generally. It would seem a pity if the unique opportunities that schools have for influencing attitudes should not be taken.

7 March 1983 N F

CONFIDENTIAL

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB

My ref:

Your ref:

7 March 1983

Dear Tim

FAMILY POLICY GROUP

I attach 20 copies of a paper by my Secretary of State on Sport and Recreation for the next meeting of the Group on 9 March.

Yours sincerely

R BRIGHT
Private Secretary

Tim Flesher Esq

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Copied also to F Mount

CABINET OFFICE

Central Policy Review Staff

70 Whitehall, London SW1A 2AS Telephone 01-233 7217

D E R Faulkner, Esq.,
Home Office,
Queen Anne's Gate,
London, SW1

7 March 1983

Dear David,

Family Policy Group

Thank you for your letter of 3 March enclosing a copy of a note by the Home Office Research and Planning Unit on Crime Prevention and the Social and Recreational Use of Schools. I can understand why you do not wish it to be circulated to the Group in its present form.

I take your point about the risks inherent in trying to prepare difficult papers at short notice, and hope that these will not arise in respect of your papers on the Voluntary Sector which, as you know, are on the short list for consideration at the next meeting of the Group. I hasten to add that the date of the next meeting has not yet been fixed, but I should hope that it will take place before the Easter break.

I am sending a copy of this letter to Tim Flesher.

Yours ever,

(G J WASSERMAN)

PS: Given both the importance of the Voluntary Sector in the context of the Family Policy Group initiative and the Prime Minister's known views on some of the issues which your papers are likely to raise, it might be useful for those of us at the Centre to see drafts of your papers at as early a stage as possible. If nothing else, this would give the CPRS enough time to produce a paper of its own on the subject.

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With Compliments of

D E R FAULKNER

Home Office
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Tel: 01 213 6350

CONFIDENTIAL HOME AFFAIRS.

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

3rd March, 1983

G. J. Wasserman, Esq.
Central Policy Review Staff
Cabinet Office
70 Whitehall
London S W1

cc FM

Dear Gordon,

FAMILY POLICY GROUP : USE OF LOCAL AUTHORITY EDUCATION FACILITIES BY THE COMMUNITY AS A WHOLE

You asked on the telephone if we could provide a background note describing the work known to the Home Office Research and Planning Unit which might be relevant to the Family Policy Group's discussion of the papers by the Secretaries of State for Education and Science and for the Environment when the Group meets on 9th March.

We have prepared a paper setting out the experience of which we are aware and which is mainly concerned with vandalism. It shows that formidable difficulties and risks can arise when attempts are made to use schools for non-educational purposes. I enclose a copy for your own information, but we should not like it to be circulated to the Group as a whole because it might give an unnecessarily discouraging impression if it were considered at this stage. If the Group would like to go into the potential difficulties in more detail after they have discussed the two main papers, we could perhaps have a fresh look at the matter and put in a rather different paper for a subsequent meeting.

I am afraid it all goes to show the difficulty of trying to prepare papers on complicated and potentially difficult subjects at a few days notice.

I am sending a copy of this letter to Tim Flesher.

Yours sincerely,

A Dear.

pp (D. E. R. FAULKNER)

CRIME PREVENTION AND THE SOCIAL AND RECREATIONAL USE OF SCHOOLS

A background paper by the Home Office Research and Planning Unit

1. In recent years with the development of renewed interest in the prevention of crime there have been a number of research and policy initiatives which have touchednot only upon the role of the school in the prevention of crime, but upon its more passive position as a target for crime and vandalism within the community. A number of studies both in this country and abroad have examined the patterns of crime and damage experienced with ways of reducing their incidence, these include, research on burglary and a demonstration project on school vandalism undertaken by the Home Office. This note assesses the likely benefits and disadvantages of developing the use of school buildings for crime prevention purposes.

Crime prevention in schools

2. The school, as a public building, often somewhat isolated from public view or located in areas where crime and delinquency are common forms of behaviour, and uninhabited for large periods of the day and school year, is particularly vulnerable to damage, whether deliberate or accidental, and to attack. They are more likely to be set on fire than all other classes of property and in London at least, they are 38 times more likely to be burgled than a residential dwelling. The costs in terms of repair of damage or replacement of stolen property, apart from the wider disruption of school life are high, and the school has, therefore, formed a natural subject for the extention of crime prevention techniques including the application of the 'situational approach' to crime prevention. This approach involves the careful analysis and assessment of the extent and type of damage and crime in relation to individual buildings, and the consideration of the features of the building itspattern of use, staff,students and locality which may encourage or enable certain types of crime or damage. This will lead to a

variety of recommendations concerning physical or design improvements to buildings, improved street lighting or surveillance, extended use of the building after school hours, or better social and community provision.

Benefits of extended use

3. The extension of school use after teaching hours either for school clubs or community activities has received considerable attention as a way of reducing both juvenile crime in the community and the risk to school buildings. The idea would seem to have a number ofadvantages. The increased occupation of the buildings should provide greater protection from attack. It may increase the extent to which the local community, and young people in particularly, identify with the school, thus discouraging them from vandalism and crime against the building itself. It may have a broader crime prevention function in providing young people with a more constructive range of activities and interests than roaming round the streets, and help - in the case of school clubs - to cement better student-staff relationships and school ethos. There is some evidence from a number of studies, that the involvement of pupils in projects concerned with their school does help to reduce vandalism and damage. Finally, extended use of school facilities and buildings may help to justify expenditure on an under-utilized community resource.

Risks

4. Unfortunately, such benefits need to be offset against a number of disadvantages in terms of crime prevention. First, there is little available evidence to demonstrate that increased use of schools does lead to a reduction in criminality amongst juveniles, apart from the obvious point that a young person engaging in activities on school premises will not be misbehaving himself elsewhere. Nor is it easy to see how such a question might be answered - crime may after all be displaced elsewhere. In the case of school burglary much of it would appear to take place at weekends after

10 pm, and thus is unlikely to be affected by recreation schemes. Secondly, increased use of school buildings does not necessarily reduce the risk of crime to the buildings, and may even increase it. The Home Office investigation of London schools found that those with the most evening use were also those which suffered most from burglary (although both vulnerability to burglary and evening use were also influenced by other factors such as the design and siting of the schools themselves). Bringing more people onto the premises may also increase the amount of accidental damage and casual vandalism to public facilities such as toilets and canteens or external features. A study of vandalism in Manchester schools, for example, found that much of the damage to buildings was 'play vandalism' caused accidentally in the course of unsupervised football games after school. Increased youth activities may also increase the risk of violence both to other youngsters and staff. Finally, the opening up of school premises may give potential burglars more opportunity to familiarize themselves with the lay-out of the building. None of these factors obviates the use of school premises for social and recreational purposes, but there is sufficient indication from available research to suggest that such risks are likely to accompany increased use.

Implementation problems

5. Thus the gains from a reduction of crime elsewhere, if it in fact occurs, must also be weighed against the cost of providing not only additional heating, lighting and staffing, but also, if damage is to be kept to a minimum, adequate supervision of activities. As in the case of play-schemes run by the police and crime prevention panels in some parts of the country careful supervision is important. The lay-out of school buildings may also affect the difficulties encountered in opening-up premises. Large schools would appear to be more vulnerable than others since they offer more targets - and windows - for attack, and present greater supervision problems.

6. The experience of both the Home Office and NACRO in developing schemes to reduce vandalism also points to the formidable organisational problems in co-ordinating activities at a local level, ensuring the co-operation of school staff, local authorities and the police, and ensuring that actions once agreed upon are followed through.

March 1983

Research and Planning Unit
Home Office
Queen Anne's Gate

Useful references

CASSERLY, M., BASS, S. and GARRETT, J..(Eds) 1980 School Vandalism: strategies for prevention. Lexington, Mass.: Lexington Books.

An American review of strategies to prevent vandalism in schools (including community relations programs) and guidelines for developing prevention schemes.

DEPARTMENT OF EDUCATION AND SCIENCE/WELSH OFFICE 1983 Vandalism in schools and colleges: some possible ways of reducing damage. Broadsheet 12.

Recently revised guidance for education authorities and individual schools.

FAIR PLAY FOR CHILDREN 1979 Why Lock Up Our Schools? London: Fair Play for Children

Makes the case for extending the social and recreational use of school buildings, particularly for young people. Contains case studies and guidelines for action.

GLADSTONE, F. J. 1980 Co-ordinating Crime Prevention Efforts. Home Office Research Study No.62. London: HMSO.

The report of the first phase of the Home Office demonstration project on vandalism in schools: deals with the process of analysing vandalism problems and of co-ordinating community resources to deal with them.

HOPE, T. and MURPHY, D. J. I. 1983 'Problem of implementing crime prevention: the experience of a demonstration project' The Howard Journal, XXII, pp. 38-50.

The final report of the Home Office demonstration project. Discusses some of the problems of implementing measures to deal with vandalism in schools.

HOPE, T. 1982 Burglary in Schools: the prospects for prevention. Research and Planning Unit Paper 11. London: Home Office.

A study of the causes of burglary in schools and a review of methods for preventing the offence (includes disoussion of expended use of schools).

HOPE, T. 1980 'Four approaches to the prevention of vandalism in schools'. Oxford Review of Education, 6, pp- 231-240.

A review of methods of preventing burglary and vandalism in schools; including methods of involving pupils and the community in preventive schemes.

cc. Recipients of TF's letter to HO d/d 24.2.83 on 4/3/83

19

FAMILY POLICY GROUP

USE OF SCHOOL FACILITIES OUTSIDE SCHOOL HOURS

Paper by the Secretary of State for Education and Science

The 1978-79 Survey

1. A sample survey of the extent of shared and extended use of maintained primary and secondary schools in England for the year 1978-79 (described in Statistical Bulletin 1/82) showed that:

i. At some time in the year most schools (93% of primary and 99% of secondary) were regularly or occasionally used outside the formal school day.

ii. Most schools (65% of primary and 98% of secondary) were regularly used in the evenings and weekends during termtime.

iii. About one fifth of all schools (17% of primary and 39% of secondary) were regularly used during school holidays.

iv. The common users of school buildings outside the formal school day during termtime were the school children themselves (49% of schools were used in this way). Other users included adult and further education students (28%), the Youth Service (26%), organised groups and societies (36%) and private individuals (6%).

v. The most commonly used facilities, where available, were those provided for sport: during termtime 85% of schools possessing indoor specialist sports facilities had these regularly used (most were secondary, for which the figure was 95%), while 51% of schools had their playing fields regularly used (41% of primary and 81% of secondary). Comparable figures for summer holiday use were: indoor 25% (mostly secondary); playing fields 16% (23% of secondary and 13% of primary).

Building aspects

2. The Government has consistently encouraged local authorities to make school premises available to members of the public when not required by schools, and to extend opportunities for public use by sharing or jointly providing school and community facilities. Publications from the DES Architects and Building Group have suggested how existing buildings may be converted or managed in such a way as to accommodate a wider range of users (Design Notes 5 of 1970 and 14 of 1976 on School and Community), and have given guidance on how to design new or remodelled schools in order to allow for use by other family members (Building Bulletin 59 "The Victoria Centre Crewe: School and Community Provision in Urban Renewal" 1981). There is a small but increasing number of 'community schools', in which the premises and the management

structure are designed to exploit the potential for community use of school facilities.

Future work

3. I intend to repeat in autumn 1983 the survey of the shared and extended use of school buildings with additional questions on what types of user are involved and what the management implications are. The results should be available during the spring of 1984. The Office of Population Censuses and Surveys (OPCS) is considering the inclusion in its General Household Survey of some questions in the section on leisure as to whether people make use of school buildings. These pieces of work will give new information on both educational and non-educational users. When we have it, we shall know better to which aspects of the problem we should, or could, give priority.

Constraints and the scope for removing them

4. The use of educational buildings outside school hours by the community is subject to certain constraints which are referred to below, together with such scope as may be apparent for removing them. Inevitably, many of these factors interact.

i. Finance: Extra use entails extra costs. At present, extra costs are financed either by providers or by users. I have no information about the extent of any unmet demand and little information about the present range of charges; so I do not know how far higher charges might affect demand.

ii. Supply and demand: The facilities supplied must match the demands made on them, both in nature and availability. So, for example, a bare classroom is no use to a mother and toddler club without storage and toilet facilities, or if it is only available in the evenings and at weekends. For the Youth Service, the following remarks of the Chairman of the Executive Committee of the National Youth Bureau (Annual Report for 1981) are relevant:-

> 'At the very least, education authorities will wish to examine the continued relevance of a Youth Service which in many areas still ceases to function during school holidays and during the hours of the day when schools are in session.'

The constraints are thus the range of available facilities in schools and the non-availability of school buildings during school hours or (where this is the case) in school holidays. The scope for removing the constraints without extra expenditure is probably limited.

iii. Policy: Positive and clear attitudes on the part of those immediately involved in the local administration of schools and the control of their premises are essential if more outside use of schools is to be encouraged. This can be assisted by consistent policy statements and where necessary decisions at all relevant levels (central government, local authority, governors and headteachers).

iv. Legal aspects: Non-educational use requires compliance with the appropriate provisions - Health and Safety at Work, fire, insurance, licensing bye-laws.

v. Organisation: There may be clashes among different users, administrative complications and pressures (especially on school secretaries). Guidance on good practice could help to promote planning to avoid such difficulties; to encourage sensitive management; and to stimulate well-directed publicity.

vi. Staffing: Wider use, particularly by young families, requires appropriate supervisory and cleaning staff. It also requires the cooperation of school caretakers and security guards who are well placed to drive a hard bargain because their duties and remuneration are closely defined in national, regional and local agreements. There may need to be additional staff time to cater for wider use than at present, and this will entail consideration of extra expenditure.

vii. Accessibility: The scope for wider use is sometimes limited by the location of school buildings (eg if they are not easily reachable by public transport) and their accessibility to prams and wheelchairs. So far as access by disabled people is concerned, the Department has given guidance in its Design Note 17 ("Access for the Physically Disabled to Educational Buildings").

viii. Design: The design and mix of available facilities may be another limiting factor. The size of the building, or its appearance, may not make it suitable or appealing for social or cultural use; the facilities may not allow flexible use or provide scope for a sufficiently wide potential choice of activities. Some of these difficulties may be remediable with falling school rolls giving scope for adaptation of rooms, but only at a cost, including the cost of alternative uses or sale proceeds which may be forgone if accommodation surplus to the school's normal requirements is retained.

Conclusion

5. By repeating, with adaptations, the survey of the shared and extended use of school buildings - and possibly with assistance from the OPCS General Household Survey - I intend to bring up to date our

knowledge of the use actually made, the obstacles to extending it and the degree, to the extent that it can usefully be judged, of unsatisfied demand. I would hope that this knowledge would permit further action to overcome these obstacles. But some of them are beyond the scope of Government action, and progress depends on local arrangement and is subject to local resources. I will also continue to give what encouragement I can, through exhortation, publications and any appropriate development projects, to shared and extended use.

KJ
2 March 1983

Andy knows about this. D.

DEPARTMENT OF INDUSTRY
ASHDOWN HOUSE
123 Victoria Street
London SW1E 6RB

Telephone Direct Line:01-212 3301
Switchboard:01-212 7676

24.3.1983.

The attached paper was requested by the Department but is no longer needed. I am therefore not drawing the paper for your retention.

With the Compliments of the

Private Secretary to the
Secretary of State for
Industry

K Benson.

CS 248

Spare 1

FAMILY POLICY GROUP

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KJ
2 March 1983

PART 2 ends:-

Wasserman to TF 28.2.83

PART 3 begins:-

Home Office (Faulkner) to CRRS (Wasserman) 3/3/83

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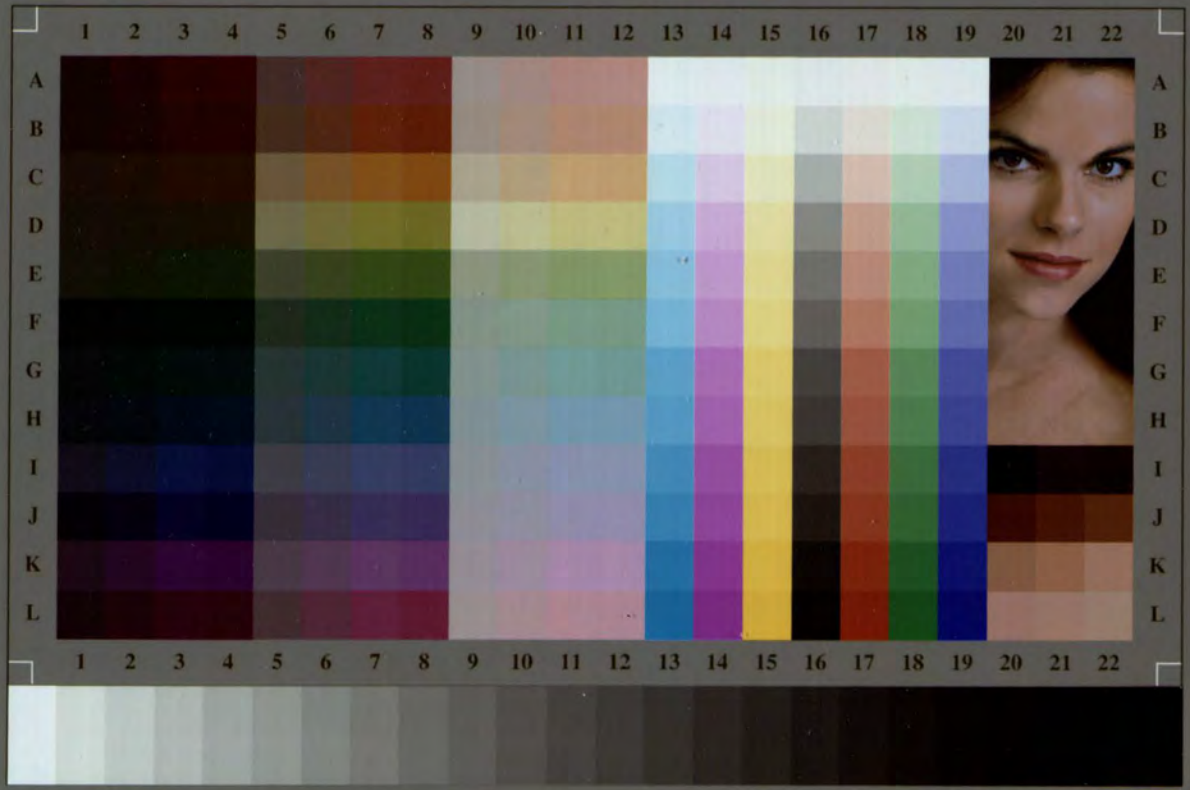

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