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DEPARTMENT OF HEALTH AND SOCIAL SECURITY
Alexander Fleming House, Elephant & Castle, London SE1 6BY
Telephone 01-407 5522
From the Minister for Health

The Rt Hon William Whitelaw CH MC MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
LONDON SW1

18.2.83

Dear Willy.

HEALTH AND SOCIAL SERVICES AND SOCIAL SECURITY (ADJUDICATION) BILL:
PARENTAL ACCESS TO CHILDREN IN CARE

I am writing to seek agreement to an amendment to this Bill, preferably at Committee Stage, relating to the access of parents, guardians or custodians to children in care over whom local authorities have parental rights by virtue of a resolution under Section 3 of the Child Care Act 1980 or a care order under section 1(2) or 7(7) of the Children and Young Persons Act 1969.

Colleagues will recall that there have already been two Private Members Bills on this subject this session, sponsored by Lord Avebury and Robert Kilroy-Silk. In agreeing that the latter should not be supported, L Committee expressed some sympathy with the underlying objectives of the Bill, and during the Lords Report debate on the HSS and SS(A) Bill Lord Trefgarne indicated that we were thinking further about the need for legislation.

The two Bills to which I have referred went much further than I should want to go. They would provide that a parent could seek a court order relating to access in any procedures relating to a parental rights resolution or a care order and could also initiate proceedings on the question of access alone. This would cut right across the existing child care system which places almost all parental responsilities with a local authority when a care order or parental rights resolution is made. The local authority is then placed under a statutory duty to promote the welfare of the child and in the exercise of this responsibility the local authority is not subject to detailed supervision by the courts. I do not think we could justify such fundamental changes in the balance of responsibility between local authorities and the courts. Moreover, to do so would have potentially considerable resource implications for the courts and for legal aid.

Having said this, I am concerned at the present situation in which all access to a child in care can be terminated as an administrative decision. All concerned (including the local authority associations and the Association of Directors of Social Services) agree that some practice in some authorities needs to be improved significantly. I have considered this very carefully, and have concluded that our main aim must be to improve local authority practice in this matter. But I do feel

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that we should also make provision for a right of appeal against the termination of access. There will not be many of these cases - not more than one or two hundred a year - and the costs should be containable within existing resources. To go further than this, by way of defining other circumstances in which an appeal can be made, raises considerable problems of definition (since children's needs vary according to their age and circumstances) and of resources.

The local authority associations have already agreed that my Department should produce, in consultation with interested bodies, a code of practice on access to children in care. This is likely to cover, for example, the importance of arranging and encouraging access by parents in most cases, the powers of local authorities to give financial and practical help to parents, procedures for informing parents of their rights and the need for elected members to be involved in criticial or contentious decisions.

We are likely to be pressed in Committee to allow parents greater recourse to the courts than I have proposed above. It was quite obvious at Second Reading in the Commons that the Opposition intend to press for more than this and they could attract a lot of support from our back-benchers.

I believe that the best way to head off such pressure and to take the initiative in a way which would give some credit to the Government would be to provide for a statutory code of practice.

The model I have in mind is section 53 of the Mental Health (Amendment) Act 1982, a copy of which I enclose. This requires the Secretary of State to prepare, and from time to time revise, a code of practice. However, unlike regulations, the code would not be binding upon local authorities, but it would of course have more impact than a voluntary code. Initially I should propose not to include provisions matching section 53(2), although I should want to reconsider this in the light of representations made in debate. I would of course propose to make clear that any Code has to be applied in the light of prevailing financial circumstances, and this would be an important factor during consultations on the content of a Code.

Copies of this letter go to Members of H Committee and Sir Robert Armstrong. The HSS and SS(A) Bill is likely to go into Committee on 1 March and it will be helpful to have clearance for these proposals by Friday 25 February.

KENNETH CLARKE

cc Mr Phillips
Mr Brown
Mr Dodds
Mr Sting
Mrs Fifth
Miss Thorpe
Miss Chrichton
Mr Fletcher
Mr Knight.

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

The Rt Hon William Whitelaw CH MC MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
LONDON

24 February 1983

Dear Secretary of State,

HEALTH AND SOCIAL SERVICES AND SOCIAL SECURITY ADJUDICATIONS BILL
PARENTAL ACCESS TO CHILDREN IN CARE

Kenneth Clarke in his letter of 18 February sought urgent agreement to amendments at the Committee Stage of the Bill on this matter. What is proposed will clearly have an impact on Scotland, since the two sets of legislation on the assumption of parental rights by local authorities are very similar. I have no objection to the proposals Kenneth Clarke outlines going ahead, but I would not want to commit myself to taking parallel action for Scotland at the moment.

There has been little expression of concern on the matter of access in Scotland. Much of the concern in England, as I understand it, relates to children subject to care orders. In Scotland the nearest equivalent is a supervision requirement imposed by a children's hearing, and unlike care orders in England these supervision requirements do not transfer any of the parents' rights to the local authority. The possibility of a local authority denying access to a child in these circumstances without the parents having recourse to the courts does not therefore arise. It is, however, true that a parent whose parental rights have been formally assumed by a local authority cannot sue in the courts for access, and this point has been recently confirmed in a judgement by the Court of Session, so there are situations in Scotland where the same difficulty may in principle arise, although the size of the problem is likely to be much less. Informal discussions with representatives of the Scottish local authorities suggest that they are likely to be strongly opposed to giving parents in these circumstances a right of recourse to the courts, even if that right is restricted in the way proposed in Kenneth Clarke's letter. I certainly hope that it will be possible for him to resist pressure from more fundamental changes to allow unrestricted opportunity for parents to challenge local authorities' decisions on access in the courts. This would be likely to disrupt the ability of social work departments to plan

the long-term future of children for whom they are fully responsible on a secure basis, apart from the extra costs that would be involved for local authorities and the courts.

My Department is consulting urgently with the Scottish local authorities and the Directors of Social Work to get their reaction to proposals of the kind put forward for England and Wales, and I propose to take account of their views and of the discussions in the Committee Stage before deciding whether I ought to make similar changes for Scotland. If necessary the relevant amendments could be put down at Report, and if they followed what had already been agreed for England and Wales they would not be likely to attract much debate.

I am copying this letter to the recipients of Kenneth Clarke's.

Yours sincerely

John C. Wilkinson

Approved by the Secretary of State
and signed in his absence


25 FEB 1983

18th February 1983

GOVERNMENT LEGISLATION

(i) Second Reading

Agricultural Holdings (Amendment) (Scotland)
International Transport Conventions (L)
Mental Health (Amendment) (Scotland) (L)
Merchant Shipping (L)
National Heritage (L)
Plant Varieties (L)
Ports (Reduction of Debt)

(ii) Standing Committee

Health and Social Services and Social Security Adjudications (L)
Housing and Building Control
Miscellaneous Financial Provisions
Mobile Homes (L)
Police and Criminal Evidence
Telecommunications

(iii) Report and Third Reading

British Shipbuilders
Civil Aviation (Eurocontrol)
Currency
Energy
Nuclear Material (Offences)

(iv) Orders and Regulations

	Date Laid	Whether Controversial	Date Required
Appropriation (N.I.)	16/2	No	By P.C. mtg on 16/3
*Export Guarantees (4)	27/1	No	By end of Feb.
House of Commons Disqualification	14/2	No	By Easter
Licensing (N.I.)	16/2	Maybe	By P.C. mtg on 16/3
London Docklands Development Corporation	17/1	Yes	A.S.A.P
Parliamentary Constituencies (England)	14/2	Yes	By P.C. mtg on 16/3
Parliamentary Constituencies (Wales)	7/2	No	For debate 21/2
Prevention of Terrorism	9/2	Yes	By 24/3

* S.I. Committee

Lords

Agricultural Marketing
Conwy Tunnel (Supplementary Powers)
Data Protection (L)
Dentists (L)
Divorce Jurisdiction, Court Fees and Legal Aid (Scotland)
Marriage (L)
ø Matrimonial Homes (L)
ø Mental Health (L)
Pig Industry Levy
ø Pilotage (L)
Transport
Water

ø Consolidation

Bills placed upon the Statute Book (6)

Commonwealth Development Corporation 1982
Consolidated Fund 1983
Electricity (Financial Provisions) (Scotland) 1982
Lands Valuation Amendment (Scotland) 1982
National Insurance Surcharge 1982
Representation of the People 1983