



House of Lords  
House of Commons  
Joint Committee on  
Human Rights

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# **Legislative Scrutiny: Ninth Progress Report**

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**Eighteenth Report of Session 2005-06**

**Drawing special attention to:**

Education and Inspections Bill





House of Lords  
House of Commons  
Joint Committee on  
Human Rights

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**Eighteenth Report of Session 2005-06**

*Report, together with formal minutes and  
appendices*

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## Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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### Publications

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at [www.parliament.uk/commons/selcom/hrhome.htm](http://www.parliament.uk/commons/selcom/hrhome.htm).

### Current Staff

The current staff of the Committee are: Nick Walker (Commons Clerk), Ed Lock (Lords Clerk), Murray Hunt (Legal Adviser), Jackie Recardo (Committee Assistant), Pam Morris (Committee Secretary) and Tes Stranger (Senior Office Clerk).

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## Summary

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The Joint Committee on Human Rights examines every Bill presented to Parliament. With Government Bills its starting point is the statement made by the Minister under section 19 of the Human Rights Act 1998 in respect of compliance with Convention rights as defined in that Act. However, it also has regard to the provisions of other international human rights instruments to which the UK is a signatory.

The Committee publishes regular progress reports on its scrutiny of Bills, setting out any initial concerns it has about Bills it has examined and, subsequently, the Government's responses to these concerns and any further observations it may have on these responses. From time to time the Committee also publishes separate reports on individual Bills.

In this Report the Committee comments on the Education and Inspections Bill, following on from a previous Report which it made on the Schools White Paper (Ninth Report of Session 2005-06). After setting out the human rights engaged by the Bill's provisions, under both the European Convention on Human Rights (ECHR) and the UN Convention on the Rights of the Child (CRC), the Committee goes on to consider the main human rights implications of the Bill. The Committee has written to the Secretary of State for Education and Skills on a number of matters arising from its scrutiny,<sup>1</sup> and may report again on the Bill in the light of his response.

The Committee welcomes the duties imposed on LEAs, under Part 1 of the Bill, to promote the fulfilment of every child's educational potential (paragraph 21) and in respect of access to recreational and leisure-time activities (paragraph 30). The Committee also welcomes the duty placed on LEAs to make arrangements to identify children not receiving education, albeit with a number of caveats on which it has written to the Secretary of State for clarification (paragraphs 22 to 28).

In its response to the Committee's previous report on the Schools White Paper, published as an Appendix to this Report, the Government states that the Committee's concerns about the applicability of human rights protections to pupils at the new Trust schools are based on the "entirely false premise that Trust schools are not part of the maintained sector". While welcoming the fact that it is now clear that Trust schools will be maintained schools, the Committee points out that this was not made clear on the face of the White Paper. In addition, given that pupils at Academies and City Technology Colleges (CTCs) have inferior human rights protections to those at maintained schools, the Committee has asked the Secretary of State why the Bill does not make Academies and CTCs maintained schools, and whether consideration will be given to making clear in the Bill that they are public authorities for the purposes of the Human Rights Act (paragraph 40).

The Committee welcomes the Bill's prohibition of interviewing as part of the admissions process in any maintained school (paragraph 43), but seeks clarification that the prohibition extends to less formal meetings than interviews (paragraph 44) and again asks the reasons why the protections of this and other provisions of the Bill concerning admissions are not extended to Academies and CTCs (paragraph 45).

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1 Appendix 4

On school transport, the Committee broadly welcomes the provision in the Bill that a parent's lack of religion is a relevant factor to which LEAs must have regard when exercising their school travel functions, including whether to provide school transport (paragraph 48), while expressing some concern that the Bill does not acknowledge that many non-religious people would regard themselves as holders of strong beliefs or convictions, rather than defined by absence of belief (paragraph 49). The Committee also notes that draft guidance on school transport has not yet been issued as expected alongside the Bill (paragraph 50).

The Committee welcomes the Bill's provision of certain safeguards on powers to discipline pupils as making it less likely that the imposition of disciplinary penalties will lead to incompatibilities with Convention rights (paragraph 51). At the same time the Committee comments that the power of members of staff to use force is very broadly defined (paragraph 52), and has asked the Secretary of State to explain why he considers that the blanket immunity from liability for persons who confiscate pupils' possessions, provided the confiscation is lawful, is compatible with Convention rights (paragraph 53).

In relation to exclusions, the Committee welcomes the Bill's provisions strengthening the duties owed to excluded pupils (paragraph 54), while regretting that the Bill does not contain provision which would have the effect of reducing the number of exclusions (paragraph 55). The Committee raises a concern about the compatibility with Article 8 ECHR (Right to respect for private and family life) of the duty imposed on parents of excluded pupils to ensure that the pupil is not present in a public place at any time during school hours on any of the first five days of an exclusion (paragraph 56).

The Committee notes that, with one exception, there is no provision in the Bill providing for pupil participation in decisions about schools which affect them (paragraph 59), and is asking the Secretary of State whether the Bill could do more in this respect.



# Bill drawn to the special attention of both Houses

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## Government Bill

### Education and Inspections Bill

Date introduced to first House	28 February 2006
Date introduced to second House	
Current Bill Number	HC Bill 134
Previous Reports	9 <sup>th</sup> of 2005-06 (on Schools White Paper)

### Introduction

1. This is a Government Bill, introduced in the House of Commons on 28 February 2006.<sup>1</sup> The then Secretary of State for Education and Skills, Rt Hon Ruth Kelly MP, made a statement of compatibility with Convention rights under s. 19(1)(a) of the Human Rights Act 1998. The Explanatory Notes which accompany the Bill<sup>2</sup> set out the Government's view of the Bill's compatibility with Convention rights at paras 654-671. The Bill received its Second Reading in the Commons on 15 March 2006 and will complete its Committee stage on 11 May 2006.

2. We have been sent a copy of a "Child Impact Assessment" of the Bill prepared by the Children's Legal Centre and the National Children's Bureau, analysing the Bill to determine its likely effect on children and young people based on the UN Convention on the Rights of the Child and the European Convention on Human Rights, as well as the five outcomes identified in the Children Act 2004.<sup>3</sup> We have also received written representations about the Bill from UNICEF UK<sup>4</sup> and ARCH (Action on Rights for Children).<sup>5</sup> We are grateful to those who have taken the trouble to write to us about the Bill. We have taken their representations into account in drafting this Report.

3. The Bill implements proposals contained in the White Paper, *Higher Standards, Better Schools for All* ("The Schools White Paper").<sup>6</sup> We considered the human rights implications of the Schools White Paper in an earlier report.<sup>7</sup> We received a response to that Report in a letter dated 31 March 2006 from Jacqui Smith MP. We consider that response in this Report, and publish it as an Appendix.<sup>8</sup>

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1 HC Bill 134

2 HC Bill 134-EN

3 Not printed

4 Appendix 1

5 Appendix 2

6 Cm 6677 (25 October 2005)

7 Ninth Report of Session 2005-06, *Schools White Paper*, HL Paper 113, HC 887

8 Appendix 3

## The human rights engaged

### *Relevant ECHR rights*

4. The Human Rights Act gives effect in the UK to one provision of the ECHR which is expressly concerned with the right to education and a number of other rights which are also engaged by the provision of state education.

5. Article 2 of the First Protocol to the ECHR provides:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

6. On ratifying the First Protocol, the UK entered a reservation in respect of the second sentence of Article 2:

“... in view of certain provisions of the Education Acts in force in the United Kingdom, the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only so far as it is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.”

7. The reservation was entered to reflect the principle originally contained in the Education Act 1944 and now re-enacted in s. 9 of the Education Act 1996:

“that pupils are to be educated in accordance with the wishes of their parents so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.”

8. Following its recent review of the UK’s international human rights obligations, the UK Government concluded that the reservation to Article 2 of Protocol 1 should remain in place.

9. The first sentence of Article 2 Protocol 1 has been interpreted by the European Court of Human Rights as including a positive right of access to the educational institutions which exist in a state at any given time. The House of Lords has recently followed this approach.<sup>9</sup>

10. The second sentence of Article 2 Protocol 1 has been interpreted as imposing a broad positive obligation on the state to respect parents’ religious and philosophical convictions. This includes a prohibition on indoctrination, and a requirement that information or knowledge be conveyed in an objective, critical and pluralistic manner.

11. A number of other Convention rights are also relevant in the education context, in particular the right to freedom of thought, conscience and religion in Article 9, the freedom to receive and impart information and ideas in Article 10, the right to a fair hearing in the determination of civil rights in Article 6(1), and the right not be discriminated against in the enjoyment of Convention rights in Article 14.

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9 *Ali v Headteacher and Governors of Lord Grey School* [2006] UKHL 14

### ***Relevant rights in the UN Convention on the Rights of the Child***

12. In addition to the above ECHR rights, the Bill engages a number of important rights contained in the UN Convention on the Rights of the Child (“the CRC”).

13. Article 28 CRC recognises the right of the child to education and obliges States to take various steps with a view to its progressive realisation. It provides:

“1. States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

...

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

...

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at school and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.”

14. Article 29 concerns the purposes of the education of the child. It provides, so far as relevant:

“1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.”

15. Article 31 CRC concerns the right of the child to rest and leisure and to engage in appropriate recreational and cultural activities. It provides:

“1. States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activities.”

16. Article 12 CRC concerns the right of the child to be consulted about matters affecting them. It provides:

“1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

17. Article 2 CRC requires States to respect and ensure the rights in the Convention without discrimination:

“1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians or family members.”

## **The human rights implications of the Bill**

18. The Bill is a substantial Bill containing a wide variety of measures covering many aspects of education and in particular school governance. The following are what we consider to be the main human rights implications of the Bill.

### **(1) New statutory duties on LEAs**

19. Part 1 of the Bill imposes a number of new duties on local education authorities (“LEAs”). Three of those duties in particular merit comment from a human rights perspective.

#### **(a) Duty to promote fulfilment of educational potential (clause 1)**

20. First, clause 1 imposes a duty on LEAs to ensure that they exercise their education functions with a view to promoting high standards and promoting the fulfilment by every child concerned of his educational potential.<sup>10</sup>

**21. From a human rights perspective, we particularly welcome the imposition of a duty to promote the fulfilment of every child’s educational potential, which echoes the language of Article 29(1)(a) CRC. We note that the other purposes identified in Article 29(1)(b)-(e) CRC are equally capable of being made the subject of a duty to promote by LEAs and we have written to the Secretary of State asking if consideration will be given to introducing comparable duties to promote in respect of those matters.**

#### **(b) Duty to make arrangements to identify children not receiving education (clause 4)**

22. Second, clause 4 imposes a duty on LEAs to make arrangements to enable them to establish, so far as it is possible to do so, the identities of children in their area who are of compulsory school age but are not registered pupils at a school and are not receiving suitable education otherwise than at a school.<sup>11</sup> “Suitable education” is defined to mean “efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have”.<sup>12</sup> When making arrangements to identify children who are not receiving education, LEAs must have regard to statutory guidance issued by the Secretary of State (or the National Assembly in Wales).<sup>13</sup>

**23. We welcome the imposition of this new duty as an important practical step which is likely to enhance protection for the right of children to education guaranteed by Article 2 Protocol 1 ECHR and Article 28 CRC.** Research has been drawn to our attention suggesting that there may be as many as 100,000 children missing from school rolls nationally.<sup>14</sup> It is obviously an important first step towards the practical realisation of the right to education that LEAs are aware of the identity of the children in their area who are not receiving suitable education.

24. However, in light of the importance of all children receiving full time suitable education, and the possible scale of the problem, we have a number of questions as to whether clause 4 of the Bill goes far enough in facilitating children’s right to education.

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10 New s. 13A(1) inserted into the Education Act 1996. The new duty applies to the education of children of compulsory school age (whether at school or otherwise) and children under or over that age who are registered as pupils at schools maintained by that authority: new s. 13A(2)

11 New s. 436A(1) introduced into Education Act 1996

12 New s. 436A(3) Education Act 1996

13 New s. 436A(2) Education Act 1996

14 Children’s Legal Centre and National Children’s Bureau, referring to a 2003 report by NACRO, *Missing Out*

25. First, we note that none of the duties imposed under the Education Act 1996 apply to children who are detained pursuant to a court order.<sup>15</sup> On the face of it therefore, the duty to make arrangements to identify children who are not receiving education will not include children in their area who are not receiving education and are serving a custodial sentence, or receiving care in a psychiatric unit pursuant to mental health legislation, or are held in an Immigration Removal Centre pursuant to immigration legislation. Nor, as far as we are aware, has any equivalent duty been placed on any other body in relation to such children. These will be some of the most vulnerable children in the LEA's area and in our view it would be preferable if the duty to make arrangements to identify children not receiving education applied to them.<sup>16</sup>

26. Second, we are aware that in recent years a growing number of children have been informally excluded from their school and we note that the new duty will not apply to such children because they remain on the school roll as registered pupils. In the absence of any duty on schools to notify the LEA of any registered pupil to whom they are not providing full time education, there are no arrangements which ensure that the LEA is aware of such children not receiving education.

27. Third, while we welcome the new duty on LEAs to make arrangements to identify children not receiving education as an important facilitative step, we note that whereas in Scotland there is a legally enforceable right to education, in England and Wales there remain only "target duties" on the Secretary of State and LEAs. LEAs, for example, are under a duty, so far as their powers enable them to do so, to contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary and secondary education are available to meet the needs of the population of their area.<sup>17</sup> A positive duty to provide and a corresponding statutory right to education would in our view be even more effective in securing the right to education to which the UK is committed by Article 2 Protocol 1 ECHR and Article 28 CRC.

**28. We have written to the Secretary of State asking these questions and may return to them in light of his reply.**

### *(c) Duty to secure access to recreational activities (clause 6)*

29. Clause 6 of the Bill imposes duties on LEAs in respect of access to recreational and leisure-time activities. First, LEAs are placed under a duty to secure that the facilities for primary and secondary education in their area include adequate facilities for recreation and social and physical training for children under 13, through, for example, camps, holiday classes, playing fields, play centres, playgrounds, gymnasiums and swimming baths at which such facilities are available for children receiving primary or secondary education.<sup>18</sup> Second, LEAs must, so far as reasonably practicable, secure for 13 to 19 year

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15 Section 562(1) Education Act 1996

16 We note that the question of educational provision for young people in detention was raised by the Council of Europe Commissioner for Human Rights in his report on his visit to the UK in November 2004: *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom 4<sup>th</sup>-12<sup>th</sup> November 2004*, CommDH (2005)6, 8 June 2005, paras 57 and 92 and Recommendation 26

17 Section 13(1) Education Act 1996

18 New s. 507A Education Act 1996, inserted by clause 6(1) of the Bill



olds access to sufficient educational and recreational leisure-time activities for the improvement of their well-being, and sufficient facilities for such activities.<sup>19</sup>

30. This strengthening of existing duties on LEAs gives effect to proposals first contained in the Green Paper, *Youth Matters*. **We welcome these new duties as positive steps to give effect to the rights recognised in Article 31 CRC.**

## **(2) Availability of statutory protections for pupils at maintained schools**

31. In our Report on the Schools White Paper, we expressed two broad concerns about the proposals in the White Paper.

32. First, we were concerned that the “independent, self-governing Trust schools” envisaged by the White Paper might not be “public authorities” for the purposes of the Human Rights Act 1998, which, if correct, would greatly undermine the practical effectiveness of the protection for the human rights of the children attending such schools and of the parents of such children.

33. Second, we were concerned that the independent Trust schools envisaged by the White Paper might not be “maintained schools” for the purposes of various statutory protections contained in the Education Acts, in which case pupils attending such schools would not benefit from those statutory protections. For example, pupils at maintained schools have a right to appeal to an independent appeal panel against their exclusion, but pupils at independent, self-governing Academies do not have such a right because they are not “maintained schools”.

34. In her response to our Report on the White Paper, the Minister says that our Report is “based on the entirely false premise that Trust schools are not part of the maintained sector”.<sup>20</sup> In law, she says, Trust schools are part of an existing category of maintained school, and are, therefore, public authorities under the Human Rights Act.

35. We welcome the Minister’s unequivocal statement that the “Trust schools” envisaged in the White Paper are both maintained schools for the purposes of the Education Acts and public authorities for the purposes of the HRA. We also accept that it is now clear that the Bill does not create any new category of school but merely provides for the existing status of foundation school to be acquired by schools currently without such a foundation.<sup>21</sup>

36. We do not agree that this was clear on the face of the Schools White Paper, which was the object of our scrutiny in our earlier Report. The White Paper spoke of the development of “a radical new school system”, in which every school could acquire “a self-governing Trust similar to those supporting Academies”, creating “a system of independent non-fee paying state schools”,<sup>22</sup> “mirroring the successful experience of Academies”.<sup>23</sup>

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19 New s. 507B Education Act 1996, inserted by clause 6(1) of the Bill

20 Appendix 3

21 Clauses 17–22 of the Bill

22 *Schools White Paper*, op cit., p. 8

23 *ibid*, p. 23

37. In the light of such statements, we were concerned that the new, independent, self-governing Trust schools envisaged in the White Paper would be modelled closely on Academies, which are not maintained schools for the purposes of the Education Acts. We welcome the fact that the Bill leaves no room for doubt about this question, and that it also follows from this that the type of schools envisaged by the Bill will be “public authorities” for the purposes of the Human Rights Act.

38. However, the meeting of these concerns by the Bill raises two other concerns. First, what is the justification for not also making Academies and City Technology Colleges (“CTCs”)<sup>24</sup> maintained schools for the purposes of the Education Acts? Pupils attending Academies and CTCs, which are state funded schools, have inferior protections in a number of respects because their schools are not maintained schools. For example, as we pointed out in our previous report, the statutory appeal machinery against exclusions is not available to pupils at Academies (or CTCs). Appeals against exclusions are often to the governors, a majority of whom are appointed by the Trust. There is therefore no right of access to an independent and impartial tribunal. This gives rise to a risk of incompatibility with the right to a fair hearing in Article 6(1) ECHR. It also gives rise to a risk of incompatibility with Article 14 ECHR in conjunction with Article 6(1) because pupils at Academies are being treated less favourably in their enjoyment of their Article 6(1) rights.

39. Second, are Academies and CTCs “public authorities” for the purposes of the Human Rights Act? We can see no justification for pupils attending Academies and CTCs benefiting from a lower level of human rights protection than would be the case at a maintained school, including the foundation schools envisaged by the Bill. If, as we expect, the Secretary of State’s view is that Academies and CTCs are intended to be public authorities for the purposes of the HRA, we think it would be desirable, in light of the uncertainty caused by the decision of the Court of Appeal in the *Leonard Cheshire* decision, to make this clear on the face of this Bill.

**40. We have therefore written to the Secretary of State asking what is the justification for not making Academies and CTCs maintained schools in this Bill, and whether consideration will also be given to making clear in this Bill that Academies and CTCs are public authorities for the purposes of the HRA. We may return to these questions in light of his response.**

### **(3) Admissions**

41. In our view, clauses 36-43 of the Bill concerning admissions should help fulfil duties under Art 2 CRC and A2P1 ECHR in conjunction with Article 14, by helping to ensure that the most vulnerable groups of children are not disadvantaged in school admissions criteria.

42. We welcome the strengthening of the status of the admissions code, for example, by requiring relevant bodies to act in accordance with it rather than merely have regard to it.<sup>25</sup>

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<sup>24</sup> Including the City College for the Technology of the Arts

<sup>25</sup> Clause 37, amending s. 84 School Standards and Framework Act 1998



43. The Bill also prohibits interviewing as part of the admissions process in any maintained school, “where the interview is to be taken into account (to any extent) in determining whether the applicant is to be admitted to the school”.<sup>26</sup> Research indicates that schools which interview often admit a smaller proportion of pupils with SEN or from more disadvantaged backgrounds.<sup>27</sup> **We therefore welcome this provision as one which makes it less likely that school admissions arrangements will be operated in practice in a way which discriminates against disadvantaged children such as those with SEN or from more deprived localities and therefore reduces the risk of incompatibility with Article 14 ECHR in conjunction with Article 2 Protocol 1 and with Article 2 CRC.**

44. We note, however, that “interview” is not defined in the Bill. There are many ways in which a school might contrive more informal opportunities to meet prospective applicants and their parents which fall far short of an interview. We think it desirable that some guidance be given to schools in this respect. **We have therefore written to the Secretary of State to ask him about the precise scope of the prohibition in clause 40, and in particular whether it extends to informal meetings which could be used as an opportunity to circumvent the prohibition on interviews.**

45. We also note that the provisions in the Bill concerning admissions, which we broadly welcome on human rights grounds, only apply to maintained schools. They do not therefore apply to Academies or City Technology Colleges. **We have written to the Secretary of State asking him to explain the justification for not extending the important protections in these clauses to Academies and CTCs. We may return to this issue in light of his reply.**

#### **(4) School transport**

46. The Bill introduces a new duty on LEAs, when exercising any of their school travel functions, to have regard, amongst other things, to any wish of a parent for the child to be provided with education or training at a particular school where that wish is based on the parent’s religion or belief.<sup>28</sup> A reference to religion includes a reference to lack of religion and a reference to belief includes a reference to lack of belief.<sup>29</sup>

47. In the Explanatory Notes to the Bill the Government acknowledges that in certain circumstances different treatment in relation to school transport could conceivably give rise to a breach of Article 14 ECHR in conjunction with Article 2 Protocol 1, but asserts that the Bill itself does not contain any provisions which could violate Article 14.<sup>30</sup>

48. **We welcome the explicit provision in the Bill that a parent’s lack of religion is a relevant factor to which LEAs must have regard when exercising their school travel functions, including whether to provide school transport.** We and our predecessor Committee have raised a number of times the problem of discriminatory provision of school transport to faith schools when such transport is not generally made available to

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26 Clause 40, inserting new s. 88A into SSFA 1998

27 *Secondary School Admissions in London*, Centre for Educational Research, February 2006

28 New s. 509AD(1) of the Education Act 1996, inserted by clause 71 of the Bill

29 New s. 509AD(3)

30 HC Bill 134-EN, para. 655

non-faith schools.<sup>31</sup> Most recently, in relation to the Equality Bill, we raised our concern that the inapplicability of the prohibitions on religious discrimination by LEAs to their provision of school transport would permit LEAs to discriminate in favour of the children of parents with religious convictions, by treating them more favourably than the children of parents with non-religious convictions. We accept that the inclusion of “lack of religion” in the factors to which LEAs must have regard when exercising their school transport functions goes a long way to meeting our earlier concern that the provisions in the Equality Bill would only serve to perpetuate discrimination in the provision of school transport in favour of children attending faith schools. However we would make two comments on the extent to which our compatibility concern has been met.

49. First, the relevant factor for the LEA, according to the Bill, is lack of religion or lack of belief. Many secularists, humanists or atheists, however, would regard themselves as the holders of strong beliefs and convictions, rather than defined by the absence of belief. In our view it would be preferable if the provision in the Bill made clear that preferences based on such strong beliefs are a relevant factor.

50. Second, in its response to our Report on the Equality Bill, the Government said that our advice will be reflected in the revised guidance on school transport to be issued in draft alongside the forthcoming Education and Inspections Bill. We are not aware of such draft guidance having yet been published. We remain of the view that such guidance is necessary, in addition to the provisions of this Bill, in order to make clear to LEAs that there is a duty under the Human Rights Act to make equal provision for school transport to support education in accordance with both religious beliefs and non-religious beliefs.<sup>32</sup> We continue to look forward to being consulted on a draft of such guidance as the Government has previously indicated.

## **(5) Discipline**

51. We welcome from a human rights perspective the provision in the Bill which makes it a condition of the lawfulness of any disciplinary penalty that the penalty must be “reasonable in all the circumstances” and which specifies that any determination of whether a penalty is reasonable must take into account whether the imposition of the punishment is proportionate in the circumstances of the case, and any relevant personal characteristic of the pupil of which the person imposing the penalty is or should reasonably be aware, including the pupil’s age, any special educational needs or disability he may have, and any religious requirements affecting him.<sup>33</sup> **In our view the provision of these safeguards on the face of the Bill are a useful elaboration of the ECHR requirement that disciplinary penalties that may impinge on, for example, the right to respect for private life or family life in Article 8 ECHR, are proportionate and make it less likely that the**

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31 See Reports on Draft School Transport Bill: Seventeenth Report of Session 2003–04, *Scrutiny of Bills: Seventh Progress Report*, HL Paper 157, HC 999, at paras. 4.1–4.25 and Twentieth Report of Session 2003–04, *Scrutiny of Bills: Eighth Progress Report*, HL Paper 182, HC 1187, at paras. 6.1–6.12; Report on School Transport Bill: Fourth Report of Session 2004–05, *Scrutiny of Bills: First Progress Report*, HL Paper 26, HC 224, at paras. 5.1–5.4; Fourth Report of Session 2005–06, *Legislative Scrutiny: Equality Bill*, HL Paper 89, HC 766, at paras. 43–49; Eleventh Report of Session 2005–06, *Legislative Scrutiny: Fifth Progress Report*, HL Paper 115, HC 899, at paras. 2.6–2.7

32 Fourth Report of Session 2005–06, *op cit.*, at para. 49

33 Clause 78(2), (3)(b) and (6)

**imposition of disciplinary penalties will lead to incompatibilities with Convention rights.**

52. We have two human rights compatibility concerns about the provisions in the Bill concerning school discipline. First, the power of members of staff to use force is very broadly defined.<sup>34</sup> The purposes for which force may be used include to prevent a pupil from prejudicing the maintenance of good order and discipline at the school or among any pupils receiving education at the school.<sup>35</sup> This is a very widely defined purpose, which in our view might give rise in practice to a risk of disproportionate use of force, in breach of the right to respect for private life and to dignity and physical integrity recognised under Article 8 ECHR. The example given in the Explanatory Notes to the Bill only serves to confirm our concerns in this respect: there it is said that reasonable force such as leading by the arm might be used to enforce an instruction for a pupil to leave a classroom.<sup>36</sup> We acknowledge that the clause does contain the constraint that only such force as is reasonable in the circumstances is within the scope of the power, but we do not think that this answers our concern about the width of a power to use reasonable force in order to prevent the “prejudicing of good order and discipline”.

53. Second, the Bill provides a blanket immunity from any liability for a person who, as a disciplinary penalty, seizes, retains or disposes of any item belonging to a pupil, provided that the confiscation is lawful.<sup>37</sup> Once the person proves that the confiscation was lawful, they are not liable in any proceedings in respect of the seizure, detention or disposal of the item, or any damage or loss which arises as a result. There is nothing to indicate that the person concerned, or the school, has any responsibility for the seized item. **We have written to the Secretary of State asking for his reasons as to why such a blanket immunity, dependent only on proof of lawfulness, is compatible with the right to peaceful enjoyment of possessions in Article 1 Protocol 1 and with the right of access to court in Article 6(1) ECHR.**

## **(6) Exclusions**

54. **We welcome the provisions of the Bill which strengthen the duties owed to excluded pupils.** The Bill introduces a new duty on schools to provide suitable full time education to temporarily excluded pupils,<sup>38</sup> and a new duty on LEAs to provide permanently excluded pupils with suitable full-time education.<sup>39</sup> We agree with the statement in the Explanatory Notes to the Bill that not only are these provisions compatible with the right to education in Article 2 Protocol 1 ECHR, but they in fact promote the enjoyment of that right.<sup>40</sup>

55. Whilst welcoming this strengthening of the duties owed to excluded pupils, we also recall that in its Report on the Convention on the Rights of the Child our predecessor Committee pointed out the concern of the UN Committee on the Rights of the Child at the

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34 Clause 80(1) of the Bill

35 Clause 80(1)(c)

36 EN para. 412

37 Clause 81

38 Clause 87(1)

39 Clause 88, inserting new s. 19(3A) into the Education Act 1996

40 EN para. 656

high rate of temporary and permanent exclusions affecting mainly children from specific groups, and its recommendation that the UK Government take appropriate measures to reduce both temporary and permanent exclusions.<sup>41</sup> **We regret that there do not appear to us to be measures in this Bill which would reduce exclusions in the first place, rather than improve provision for excluded pupils once an exclusion has taken place.**

56. Our main compatibility concern in relation to the Bill's provisions concerning exclusions, however, relates to the duty imposed on parents in relation to excluded pupils, on pain of criminal sanction. The Bill provides that the parent of an excluded pupil must ensure that the pupil is not present in a public place at any time during school hours on any of the first five days of the exclusion.<sup>42</sup> It is an offence by the parent if the excluded pupil is present in a public place at any time during that period, unless the parent has a reasonable justification for failing to comply with the duty.

57. The Explanatory Notes to the Bill say that the Government has considered the compatibility of this clause from the point of view of the parent's right to liberty and to move within the State.<sup>43</sup> **In our view, however, this provision raises concerns about the proportionality of the impact on parents' right to respect for private life in Article 8 ECHR, as well as concerns about whether in practice the measure will discriminate against single parents or parents in lower paid employment in which it may be more difficult to secure time off work to be able to look after an excluded child for five full days. We have written to the Secretary of State to raise these concerns about this provision.**

### **(7) Adequacy of provision for consultation with children and young people**

58. In our predecessor Committee's report on the CRC, it noted that the UN Committee was concerned that there had been no consistent incorporation of the obligations of Article 12 CRC in legislation, which requires States to ensure that children have a right to express their views in matters which affect them: for example, in education school children are not systematically consulted in matters that affect them.<sup>44</sup>

59. We have received representations that the voice of the child is almost completely absent from this Bill, which has very little to offer in terms of pupil participation in education. For example, the Bill provides for parent councils to be established by foundation schools, the members of which must be parents of registered pupils at the school,<sup>45</sup> and imposes a new duty on the governing bodies of maintained schools, to have regard to any views expressed by parents of registered pupils.<sup>46</sup> There is no equivalent of either of these provisions in the Bill providing for pupil participation in decisions about the school which affect them. The exception is clause 6, which expressly requires LEAs to take steps to ascertain the views of the relevant young persons in their area about positive leisure time activities and facilities for such activities in the LEA's area, the need for any additional such activities and

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41 Tenth Report of Session 2002–03, *Convention on the Rights of the Child*, HL Paper 117, HC 81, at para. 71

42 Clause 90(2)

43 EN para. 668

44 Tenth Report of Session 2002–03, *op cit.*, at para. 75

45 Clause 32

46 Clause 35

facilities, and access to such activities and facilities, and requires LEAs to secure that those views are taken into account.<sup>47</sup>

**60. We have therefore written to the Secretary of State asking whether, in light of the requirements of Article 12 CRC, the Bill could do more to provide children with greater opportunity to express their views in matters which affect them.**

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47 News s. 507B Education Act 1996, inserted by clause 6(1) of the Bill

# Formal Minutes

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**Monday 8 May 2006**

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness	Mr Douglas Carswell MP
Lord Campbell of Alloway	Mary Creagh MP
Lord Judd	Dr Evan Harris MP
Lord Lester of Herne Hill	Dan Norris MP
Baroness Stern	Mr Richard Shepherd MP

Draft Report [Legislative Scrutiny: Ninth Progress Report], proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 42 read and agreed to.

Paragraph 43 read.

Question put, That the paragraph stand part of the Report.

The Committee divided.

Content, 6	Not Content, 3
Mary Creagh MP	Lord Campbell of Alloway
Mr Andrew Dismore MP	Mr Douglas Carswell MP
Dr Evan Harris MP	Mr Richard Shepherd MP
Lord Judd	
Dan Norris MP	
Baroness Stern	

Paragraph 44 read.

Question put, That the paragraph stand part of the Report.

The Committee divided.

Content, 7

Lord Bowness  
Mary Creagh MP  
Mr Andrew Dismore MP  
Dr Evan Harris MP  
Lord Judd  
Dan Norris MP  
Baroness Stern

Not Content, 3

Lord Campbell of Alloway  
Mr Douglas Carswell MP  
Mr Richard Shepherd MP

Paragraphs 45 to 47 read and agreed to.

Paragraph 48 read.

Question put, That the paragraph stand part of the Report.

The Committee divided.

Content, 8

Lord Bowness  
Mary Creagh MP  
Mr Andrew Dismore MP  
Dr Evan Harris MP  
Lord Judd  
Dan Norris MP  
Mr Richard Shepherd MP  
Baroness Stern

Not Content, 2

Lord Campbell of Alloway  
Mr Douglas Carswell MP

Paragraph 49 read.

Question put, That the paragraph stand part of the Report.

The Committee divided.

Content, 5

Lord Bowness  
Dr Evan Harris MP  
Lord Judd  
Mr Richard Shepherd MP  
Baroness Stern

Not Content, 5

Lord Campbell of Alloway  
Mr Douglas Carswell MP  
Mary Creagh MP  
Mr Andrew Dismore MP  
Dan Norris MP

The numbers being equal, the paragraph was agreed to pursuant to House of Lords Standing Order 57.

Paragraphs 50 and 51 read and agreed to.

Paragraph 52 read.

Question put, That the paragraph stand part of the Report.

The Committee divided.

Content, 5

Lord Bowness  
Mr Andrew Dismore MP  
Dr Evan Harris MP  
Lord Judd  
Baroness Stern

Not Content, 5

Lord Campbell of Alloway  
Mr Douglas Carswell MP  
Mary Creagh MP  
Dan Norris MP  
Mr Richard Shepherd MP

The numbers being equal, the paragraph was agreed to pursuant to House of Lords Standing Order 57.

Paragraph 53 read.

Question put, That the paragraph stand part of the Report.

The Committee divided.

Content, 6

Lord Bowness  
Lord Campbell of Alloway  
Mr Andrew Dismore MP  
Dr Evan Harris MP  
Lord Judd  
Baroness Stern

Not Content, 4

Mr Douglas Carswell MP  
Mary Creagh MP  
Dan Norris MP  
Mr Richard Shepherd MP

Paragraph 54 read.

Question put, That the paragraph stand part of the Report.

The Committee divided.

Contents, 7

Lord Bowness  
Mary Creagh MP  
Mr Andrew Dismore MP  
Dr Evan Harris MP  
Lord Judd  
Dan Norris MP  
Baroness Stern

Not Content, 3

Lord Campbell of Alloway  
Mr Douglas Carswell MP  
Mr Richard Shepherd MP



Paragraph 55 read.

Question put, That the paragraph stand part of the Report.

The Committee divided.

Content, 6

Not Content, 4

Lord Bowness  
Mr Andrew Dismore MP  
Dr Evan Harris MP  
Lord Judd  
Dan Norris MP  
Baroness Stern

Lord Campbell of Alloway  
Mr Douglas Carswell MP  
Mary Creagh MP  
Mr Richard Shepherd MP

Paragraphs 56 to 60 read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Eighteenth Report of the Committee to each House. —  
(*The Chairman.*)

Several Papers were ordered to be appended to the Report.

*Ordered*, That the Chairman do make the Report to the House of Commons and Baroness Stern do make the Report to the House of Lords.

[Adjourned till Monday 15 May at 4pm.]

# Appendices

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## Appendix 1: Letter from UNICEF UK

I understand that the Joint Committee on Human Rights will be considering the Education Bill after Easter recess.

The NSPCC along with UNICEF UK, NCB, Terrence Higgins Trust, fpa and YWCA are proposing an amendment to this bill, to make Personal Social and Health Education (PSHE) a foundation subject.

Under Part 5, Clause 61, we propose inserting PSHE as a foundation subject for the fourth key stage alongside information and communication technology, physical education and citizenship. We would suggest that this pays particular attention to sex and relationships education, and takes into account the need for young people to make an informed choice about their relationships with other young people and with adults. Another reason to make PSHE a foundation subject is that it would enable all schools to follow the *Social, Emotional and Behavioural Skills* curriculum resource currently being piloted by the DfES in secondary schools.

This amendment would strongly support the UN Convention on the Rights of the Child, which states that children and young people have the right to enjoy the highest attainable health, access to health facilities (Article 24), and access to information which will allow them to make decisions about their health (Article 17). It also states that those professionals working with young people ‘shall take appropriate measures to develop preventative health care, guidance for parents, and family planning education and services’ (Article 24). Children and young people also have the right to be heard, express opinions and be involved in decision-making (Article 12). They have the right to education which will help them learn, develop and reach their full potential and prepare them to be understanding and tolerant to others (Article 29). Additionally, children have the right not to be discriminated against (Article 2).

We hope the Joint Committee on Human Rights will pay particular attention to the UN Convention on the Rights of the Child, which the UK ratified in 1991, when considering this amendment.

16 March 2006

## Appendix 2: Submission from Action on Rights for Children (ARCH)

We are aware that the Education and Inspections Bill currently before Parliament is likely to raise significant human rights issues on a number of grounds; however, our particular concern is with Part 7 Chapter 2 which deals with excluded pupils, and so we are confining our comments to this section. We believe that clauses 90 and 94 engage several Articles of the European Convention on Human Rights.

### *Clause 90*

This clause places a duty on the parent of any pupil of compulsory school age who has been excluded from school, whether permanently or for a fixed term, to ensure that the child is not present in a public place at any time during school hours during the first five days of any such exclusion. A parent commits an offence if their child appears in public during this time without ‘reasonable justification’, for which s/he is liable to pay a fine or Fixed Penalty Notice.

The only broadly comparable situation of which we are aware is the imposition of a Home Detention Curfew under the Criminal Justice Act 1991 as amended by the Crime and Disorder Act 1998, but in that case the curfew is imposed following conviction for a criminal offence.

### *Article 5 ECHR*

Although Article 5(d) provides for the detention of a minor for the purpose of ‘educational supervision’, we would seriously question whether this can be defined as merely providing an excluded pupil with homework.

While clause 87(2) of the Bill places a duty on school governors to ensure education is provided during fixed-term exclusions, the arrangements that they should make are to be left to guidance, and the day on which they should begin providing education will be prescribed in regulations.

Clause 88 deals with the duty of LEAs to secure the education of children permanently excluded from school. Again, the day from which this must begin is left to regulations.

The lack of detail makes it impossible to determine whether the detention might possibly meet the criteria of Art 5 in any respect. We would suggest that, at the very least, purporting to use the force of law in order to compel a child to remain indoors for a period of time without the order of a court, and where no education is provided, is very likely to breach his/her Art 5 right to liberty.

If it is the case that such detention is not lawful, then the punishment of a parent for failure to prevent the presence of the child in a public place cannot be compatible with the parent’s rights under Article 7 ECHR.

### *Article 6 ECHR*

It is already a matter of some concern to us that the standard of proof required for a head-teacher’s decision to exclude a pupil is that of ‘balance of probabilities’. The Bill in our view aggravates the position further by seeking to impose a restriction on the liberty of the excluded child, and by creating a new criminal offence for parents. Given the severity of these sanctions, and bearing in mind that Home Detention Curfews are currently imposed only where criminal offences have been committed, we question whether the civil standard of proof is sufficient to meet the requirements of Art 6(1).

Neither a head-teacher nor a school’s governors can be said to constitute an independent tribunal; a pupil does not have access to legal representation before the decision to exclude

is made; no provision is made in the Bill for consideration of whether an exclusion is reasonable before the imposition of a fine on parents who breach the requirement to keep their child at home; no allowance is made for a parent's decision to lodge an appeal, nor is any mention made of whether parents are compensated and their record deleted where such an appeal is successful.

We believe that the serious restriction of liberty that would result from an exclusion, and the criminal liability that is created for parents, should require a criminal standard of proof.

### *Article 14*

In our opinion, clause 90 of the Bill is likely to be discriminatory on at least two grounds.

The most recent figures from the DfES show that 64% of permanent exclusions and 51% of fixed-term exclusions are of pupils with Special Educational Needs. A child with SENs is 10 times more likely to receive a fixed-term exclusion, and 15 times more likely to be permanently excluded than one who does not have special needs.<sup>1</sup> The provisions of clause 90 will thus have a disproportionate effect on children with SENs.

We would add that the parent of a child who is, for example, on the autistic spectrum already faces significant daily challenges, and a demand that the child be confined for an entire day may place quite intolerable stress on both parents and child.

Clause 90 is also likely to have particularly serious implications for families on low incomes. They are more likely to be living in cramped accommodation with no access to a garden, in which case the child must be kept indoors all day, even in the height of Summer. Further, a parent is more likely to be in insecure, low-paid work and the necessity to take several days off work may cause a disastrous loss of earnings, or even bring about the termination of employment.

Indeed, we suggest that the pressure that would be placed upon families in either, or both, of the above situations is not only discriminatory; it is also tantamount to inhuman or degrading treatment and, as such, engages Article 3 ECHR.

### *Article 8*

Clause 90 in our view proposes a considerable interference with family life. Parents are being ordered to confine their child or face criminal sanctions. Where a child is too young to be left alone at home, or has special needs that make it impossible, this also means that the parent and family members below school age are similarly confined. Loss of income and the potential stresses placed on parent-child relationships are capable of causing serious deterioration in family life.

If the detention is not compatible with Article 5 (as outlined above) then we would suggest that it is also likely to represent a breach of Article 8.

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<sup>1</sup> Commons Hansard 29 March 2006: Column 1084W  
[http://www.publications.parliament.uk/pa/cm200506/cmhansard/cm060329/text/60329w30.htm#60329w30.html\\_snew3](http://www.publications.parliament.uk/pa/cm200506/cmhansard/cm060329/text/60329w30.htm#60329w30.html_snew3)

Under this heading, we would also like to refer the Committee briefly to the provisions of clause 77 ss2 which give disciplinary powers to schools for pupils' behaviour outside school hours and off the school premises. It appears to us that clauses 77 and 90 represent a significant extension of a school's authority beyond the school gates, and into the home. The implications are substantial for the Art 8 rights of children and their parents.

### *Clause 94*

This clause amends s16 of the Crime and Disorder Act 1998 to allow the removal to 'designated premises' of children excluded from school who are found in a public place during 'truancy sweeps'.

We have protested on several occasions in the past about the power to 'remove' truants from a public place: truancy is not a criminal offence and we are concerned that the police should ever have been given such powers. We are therefore alarmed that these powers are now to be extended to 'remove' children excluded from school - again, who are not committing any criminal offence - and effectively to hold them in custody. We simply cannot see how this power of removal and detention is compatible with Art 5 ECHR, and will be most interested to read the views of the Committee on this matter.

*20 April 2006*

### **Appendix 3: Letter from Rt Hon Jacqui Smith MP, Minister of State for Schools and 14-19 Learners, Department for Education and Skills, re Response to the Committee's Report on the Schools White Paper**

I would like to thank the Joint Committee for their consideration of the Schools White Paper.

The Committee's report, published on 5 February, is exclusively concerned with the concept of Trust schools. This is a non-statutory term used in the White Paper to refer to a foundation school with a foundation. About 100 such schools currently exist in the maintained sector. The Education and Inspections Bill (Clauses 17 to 22) provides for the acquisition of a foundation to be a prescribed alteration, requiring a statutory procedure of proposal and decision making.

Unfortunately, the report is based on the entirely false premise that Trust schools are not part of the maintained sector. In law, Trust schools are part of an existing category of maintained school. They are, therefore, public authorities under the Human Rights Act, and the Committee's concern that this should be made clear in the Bill is unnecessary.

I look forward to the Committee's scrutiny of the Education and Inspections Bill currently before Parliament.

*31 March 2006*

## Appendix 4: Letter from the Chair to Rt Hon Alan Johnson MP, Secretary of State for Education and Skills, Department for Education and Skills

Many congratulations on your appointment as Education Secretary: on the Joint Committee on Human Rights we look forward to working constructively with you on human rights matters falling within your remit.

As you may know, the Committee seeks to examine and report on the human rights implications of Government bills introduced to Parliament. We are currently considering the human rights compatibility of the Education and Inspections Bill, after reporting previously on the Schools White Paper, and would appreciate your answers in relation to the following points which have arisen from the Committee's scrutiny of the Bill's compatibility. We will shortly be publishing our preliminary views on the Bill and may return to report again in light of your response to these points.

### New duties on LEAs

The Committee welcomes the imposition in clause 1 of the Bill of a duty to promote the fulfilment of every child's educational potential, which echoes the language of Article 29(1)(a) of the UN Convention on the Rights of the Child ("CRC"). However, it notes that the other purposes identified in Article 29(1)(b)-(e) CRC are equally capable of being made the subject of a duty to promote by LEAs. **Will consideration be given to introducing comparable duties to promote in respect of those matters?**

The Committee welcomes the imposition of the new duty to make arrangements to identify children not receiving education in clause 4 of the Bill as an important practical step which is likely to enhance protection for the right of children to education guaranteed by Article 2 Protocol 1 ECHR and Article 28 CRC. However, in light of the importance of all children receiving full time suitable education, and the possible scale of the problem, it has three questions as to whether clause 4 of the Bill goes far enough in facilitating children's right to education.

First, the Committee notes that none of the duties imposed under the Education Act 1996 apply to children who are detained pursuant to a court order.<sup>2</sup> On the face of it therefore, the duty to make arrangements to identify children who are not receiving education will not include children in their area who are not receiving education and are serving a custodial sentence, or receiving care in a psychiatric unit pursuant to mental health legislation, or are held in an Immigration Removal Centre pursuant to immigration legislation. Nor, as far as the Committee is aware, has any equivalent duty been placed on any other body in relation to such children. **Does the duty to identify children not receiving education apply to such children, and if not why not, bearing in mind that they will be amongst the most vulnerable children in the LEA's area?**

Second, the Committee is aware that in recent years a growing number of children have been informally excluded from their school and notes that the new duty will not apply to such children because they remain on the school roll as registered pupils. In the absence of any duty on schools to notify the LEA of any registered pupil to whom they are not

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2 Section 562(1) Education Act 1996

providing full time education, there appear to be no arrangements which ensure that the LEA is aware of such children not receiving education. **Will such arrangements be put in place?**

Third, while the Committee welcomes the new duty on LEAs to make arrangements to identify children not receiving education as an important facilitative step, it notes that whereas in Scotland there is a legally enforceable right to education, in England and Wales there remain only “target duties” on the Secretary of State and LEAs. A positive duty to provide and a corresponding statutory right to education would be even more effective in securing the right to education to which the UK is committed by Article 2 Protocol 1 ECHR and Article 28 CRC. **Will consideration be given to making equivalent provision in England and Wales?**

### **Availability of statutory protections for pupils at maintained schools**

The Committee welcomes the fact that the Bill leaves no room for doubt about whether the “Trust schools” envisaged by the Bill are maintained schools for the purposes of the Education Acts, and that it also follows from this that the type of schools envisaged by the Bill will be “public authorities” for the purposes of the Human Rights Act.

However, the meeting of these concerns by the Bill raises two other concerns. **First, what is the justification for not also making Academies and City Technology Colleges (“CTCs”) maintained schools for the purposes of the Education Acts?** Pupils attending Academies and CTCs, which are state funded schools, have inferior protections in a number of respects because their schools are not maintained schools. For example, as we pointed out in our previous report on the Schools White Paper, the statutory appeal machinery against exclusions is not available to pupils at Academies (or CTCs). Appeals against exclusions are often to the governors, a majority of whom are appointed by the Trust. There is therefore no right of access to an independent and impartial tribunal. This gives rise to a risk of incompatibility with the right to a fair hearing in Article 6(1) ECHR. It also gives rise to a risk of incompatibility with Article 14 ECHR in conjunction with Article 6(1) because pupils at Academies are being treated less favourably in their enjoyment of their Article 6(1) rights.

**Second, are Academies and CTCs “public authorities” for the purposes of the Human Rights Act?** The Committee can see no justification for pupils attending Academies and CTCs benefiting from a lower level of human rights protection than would be the case at a maintained school, including the foundation schools envisaged by the Bill. If Academies and CTCs are intended to be public authorities for the purposes of the HRA, it would be desirable, in light of the uncertainty caused by the decision of the Court of Appeal in the *Leonard Cheshire* decision, to make this clear on the face of this Bill.

### **Admissions**

The Committee welcomes the prohibition on interviewing as part of the admissions process in any maintained school as a provision which makes it less likely that school admissions arrangements will be operated in practice in a way which discriminates against disadvantaged children such as those with SEN or from more deprived localities and therefore reduces the risk of incompatibility with Article 14 ECHR in conjunction with Article 2 Protocol 1 and with Article 2 CRC.



It notes, however, that “interview” is not defined in the Bill. There are many ways in which a school might contrive more informal opportunities to meet prospective applicants and their parents which fall far short of an interview. We think it desirable that some guidance be given to schools in this respect. **What is the precise scope of the prohibition in clause 40, and in particular does it extend to informal meetings which could be used as an opportunity to circumvent the prohibition on interviews?**

The provisions in the Bill concerning admissions only apply to maintained schools. They do not therefore apply to Academies or City Technology Colleges. **What is the justification for not making those protections apply to Academies and CTCs?**

### School transport

In several previous Reports the Committee has expressed concerns about the need for guidance to LEAs to make clear the duty under the Human Rights Act to make equal provision for school transport for children of parents with both non-religious and religious beliefs, and the Government has agreed to supply us with a copy of new draft guidance when it is published. If draft guidance on school transport has been published alongside the Education and Inspections Bill we would be grateful if you would supply us with a copy.

### Discipline

The Committee has two human rights compatibility concerns about the provisions concerning discipline. First, the power of members of staff to use force is very broadly defined.<sup>3</sup> The purposes for which force may be used include to prevent a pupil from prejudicing the maintenance of good order and discipline at the school or among any pupils receiving education at the school.<sup>4</sup> This is a very widely defined purpose. **What are the reasons for the Government’s view that such a widely drafted power will not give rise in practice to a risk of disproportionate use of force, in breach of the right to respect for private life and to dignity and physical integrity recognised under Article 8 ECHR?**

Second, the Bill provides a blanket immunity from any liability for a person who, as a disciplinary penalty, seizes, retains or disposes of any item belonging to a pupil, provided that the confiscation is lawful.<sup>5</sup> Once the person proves that the confiscation was lawful, they are not liable in any proceedings in respect of the seizure, detention or disposal of the item, or any damage or loss which arises as a result. There is nothing to indicate that the person concerned, or the school, has any responsibility for the seized item. **What are the reasons for the Government’s view as to why such a blanket immunity, dependent only on proof of lawfulness, is compatible with the right to peaceful enjoyment of possessions in Article 1 Protocol 1 and with the right of access to court in Article 6(1) ECHR?**

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3 Clause 80(1) of the Bill

4 Clause 80(1)(c)

5 Clause 81



## Exclusions

The Committee is concerned about the human rights compatibility of the duty imposed on parents in relation to excluded pupils, on pain of criminal sanction. The Bill provides that the parent of an excluded pupil must ensure that the pupil is not present in a public place at any time during school hours on any of the first five days of the exclusion.<sup>6</sup> It is an offence by the parent if the excluded pupil is present in a public place at any time during that period, unless the parent has a reasonable justification for failing to comply with the duty. The Explanatory Notes to the Bill say that the Government has considered the compatibility of this clause from the point of view of the parent's right to liberty and to move within the State.<sup>7</sup> **Why in the Government's view, does this provision not involve a risk of a disproportionate impact on parents' right to respect for private life in Article 8 ECHR, and of discrimination against single parents or parents in lower paid employment in which it may be more difficult to secure time off work to be able to look after an excluded child for five full days?**

## Consultation of children

**In light of the requirements of Article 12 CRC, could the Bill could do more to provide children with greater opportunity to express their views in matters which affect them?**

I would be very grateful if you could let me have your response to these queries by 26 May 2006.

*9 May 2005*

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6 Clause 90(2)

7 EN para. 668

## Public Bills Reported on by the Committee (Session 2005–06)

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\* indicates a Government Bill

Bills which engage human rights and on which the Committee has commented substantively are in bold

<i>BILL TITLE</i> <i>NO</i>	<i>REPORT</i>
Charities Bill*	1 <sup>st</sup>
Children and Adoption Bill*	5 <sup>th</sup> & 15 <sup>th</sup>
Civil Aviation Bill*	7 <sup>th</sup> & 14 <sup>th</sup>
Commissioner for Older People (Wales) Bill*	6 <sup>th</sup>
Commons Bill*	15 <sup>th</sup>
Consumer Credit Bill*	1 <sup>st</sup> & 14 <sup>th</sup>
Council Tax (New Valuation Lists for England)*	5 <sup>th</sup>
Criminal Defence Service Bill*	1 <sup>st</sup>
Crossrail Bill*	1 <sup>st</sup>
Education and Inspections Bill*	18 <sup>th</sup>
Electoral Administration Bill*	11 <sup>th</sup>
Equality Bill*	4 <sup>th</sup> & 11 <sup>th</sup>
European Union (Accessions) Bill*	5 <sup>th</sup>
Fraud Bill*	14 <sup>th</sup>
Government of Wales Bill*	14 <sup>th</sup>
Health Bill*	6 <sup>th</sup> & 11 <sup>th</sup>
Identity Cards Bill*	1 <sup>st</sup>
Immigration, Asylum and Nationality Bill*	3 <sup>rd</sup> , 5 <sup>th</sup> & 11 <sup>th</sup>
Legislative and Regulatory Reform Bill*	17 <sup>th</sup>
London Local Authorities Bill	15 <sup>th</sup>
London Olympic Games and Paralympic Games Bill*	15 <sup>th</sup>
Merchant Shipping (Pollution) Bill*	1 <sup>st</sup>
National Insurance Contributions Bill*	14 <sup>th</sup>
National Lottery Bill*	1 <sup>st</sup>
Natural Environment and Rural Communities Bill*	1 <sup>st</sup>
NHS Redress Bill*	15 <sup>th</sup>
Northern Ireland (Offences) Bill*	7 <sup>th</sup>
Racial and Religious Hatred Bill*	1 <sup>st</sup>
Regulation of Financial Services (Land Transactions) Bill*	5 <sup>th</sup>
Road Safety Bill*	1 <sup>st</sup>
Terrorism Bill*	3 <sup>rd</sup>

Terrorism (Northern Ireland) Bill*	11 <sup>th</sup>
Transport (Wales) Bill*	1 <sup>st</sup>
<b>Violent Crime Reduction Bill*</b>	<b>5<sup>th</sup></b>
Work and Families Bill*	15 <sup>th</sup>