

Standing Committee B

The Committee consisted of the following Members:

Chairmen:

Mr. Jimmy Hood, †

Mr. Mike Hancock

†Brooke, Annette (*Mid-Dorset and North Poole*) (LD)
†Cawsey, Mr. Ian (*Brigg and Goole*) (Lab)
†Coffey, Ann (*Stockport*) (Lab)
Eagle, Maria (*Parliamentary Under-Secretary of State for Education and Skills*)
†Evennett, Mr. David (*Bexleyheath and Crayford*) (Con)
†Grogan, Mr. John (*Selby*) (Lab)
†Hughes, Beverley (*Minister for Children and Families*)
†Jackson, Mr. Stewart (*Peterborough*) (Con)
†Johnson, Ms Diana R. (*Kingston upon Hull, North*) (Lab)
†Keeble, Ms Sally (*Northampton, North*) (Lab)
†Kidney, Mr. David (*Stafford*) (Lab)
†Loughton, Tim (*East Worthing and Shoreham*) (Con)
†Miller, Mrs. Maria (*Basingstoke*) (Con)
†Moran, Margaret (*Luton, South*) (Lab)
†Russell, Christine (*City of Chester*) (Lab)
Williams, Mark (*Ceredigion*) (LD)
†Wright, Jeremy (*Rugby and Kenilworth*) (Con)
Emily Commander, *Committee Clerk*
† **attended the Committee**

Column Number: 87

**Thursday 16 March 2006
(Morning)**

[Mr. Mike Hancock in the Chair]

[Children and Adoption Bill \[Lords\]](#)

9 am

The Chairman: Before we begin, on behalf of the Committee I send kind thoughts

and hopes for a speedy recovery to Maria Eagle. I am sorry that she is not with us today.

The Minister for Children and Families (Beverley Hughes): Me too.

The Chairman: The Minister agrees with that sentiment wholeheartedly. I understand that she wishes to move an amendment to the programme order. Copies of the motion are available in the room. It is debatable for up to half an hour. However, under the terms of Standing Order No. 83C(10), if any Member signals his objection the motion will lapse.

Beverley Hughes: I beg to move,

That the Order of the Committee of 13th March 2006 be amended by—

(a) the insertion after paragraph (1)(b) of—

“(c) at 10.30 a.m. and 4.00 p.m. on Tuesday 21st March;”,

and

(b) the substitution in paragraph (3) of “7.00 p.m. on Tuesday 21st March” for “4.00 p.m. on Thursday 16th March”.

As you say, Mr. Hancock, members of the Committee are aware of the intention behind the motion.

Clause 3

Contact orders: warning notices

Question proposed, That the clause stand part of the Bill.

Tim Loughton (East Worthing and Shoreham) (Con): I echo the comments about the Under-Secretary. I hope that it is not the forthrightness of our arguments on Tuesday that has confined her to her bed. She stoically battled through our proceedings, and we wish her a speedy recovery.

The clause is short and deals with warning notices attached to contact orders. The contact orders should include a warning about the implication of not complying with them. That is crucial, and we will go on to discuss enforcement orders that have penalties for breaching contact orders. There is no detail in the clause, and we want to know what form a warning notice will take and how detailed it will be. Will it set out a tariff of penalties that could befall those breaching a contact order, or will it be just a general warning, as one might get on a unit trust product saying that its value might go up as well as down? How

Column Number: 88

serious will the warning be? Will it be a cigarette packet-type warning, or will it have some punch, as we would like to see?

Beverley Hughes: The hon. Gentleman will know that the report on the pre-legislative scrutiny of the Bill recommended that an order issued by the courts should include a clear warning that breaching its requirement would lead to an enforcement order being made involving unpaid work, a fine or imprisonment. The warning should

set out in full not only the possible consequences of breaching an enforcement order but the possibility, although we know that it is not used very often, of contempt and the possible consequences of that. The warning should give a full account of the possible consequences to the person receiving an order.

It is also important—we intend to ensure this—that the warning is embodied within the order itself. It will not be a piece of paper attached with a paper clip; we will reprint and redesign the orders so that they include the warning. There can therefore be no possibility that people have not seen it. I hope that that satisfies the hon. Gentleman.

Tim Loughton: I am grateful for that. I was hoping for the indication that the warning will not be an add-on but will set out clearly the implications of not complying. On that basis, we are happy with the clause.

Question put and agreed to.

Clause 3 ordered to stand part of the Bill.

Clause 4

Enforcement orders

Margaret Moran (Luton, South) (Lab): I beg to move amendment No. 34, in clause 4, page 7, line 22, at end insert—

‘(3A) In deciding whether a person had reasonable excuse for failing to comply with a contact order, the court shall consider

- (a) any objections from the child about the contact arrangements, and
- (b) the behaviour of the contact parent.

(3B) No court may make an enforcement order as regards a person in breach of a contact order unless,

- (a) it has considered an assessment of the risk to the child concerned and of any person with whom the child has his home, and
- (b) it is satisfied that the safety of the child of any person with who the child has his home will not be compromised by making an enforcement order.’

May I say how pleased we are to be here at this early hour and under your firm guidance, Mr. Hancock?

It might be useful to remind ourselves that the context in which we are discussing enforcement orders is based on reports rather than anecdotes. According to a report by Her Majesty’s inspectorate of court administration, the evidence shows that there is such a strong presumption of contact with both parents that concerns about safety and risk to the child are overridden in practice. It is therefore important to ensure that the Bill makes the safety of the child

Column Number: 89

paramount throughout the Bill. I welcome the statements by Ministers on Second

Reading to that effect.

However, there are concerns that the paramountcy principle in clauses 4 and 5 is not sufficient and needs to be reinforced. We also know from research evidence that the point of separation and the point of enforcement of contact are the most dangerous times for both parent and child. Therefore, it is incumbent on us to ensure that we safeguard children at those points in the separation proceedings. The amendment would ensure that when the courts consider reasonable excuse, they take into account the risk to the child and others, the behaviour of the parent and, most importantly, the views of the child.

The Government stated in “Parental Separation: Children’s Needs and Parents’ Responsibilities”, produced by the Department for Education and Skills and the Department of Trade and Industry, that contact arrangements that put the safety of the child or the resident parent at risk should not be put in place. The amendment aims to express the Government’s intention in legislation, bearing in mind that children have been killed by violent parents—fathers predominantly—as a result of contact arrangements ordered by the courts in England and Wales.

Sturge and Glaser, who provided expert advice on child contact and domestic violence for the Court of Appeal in *re L, V, M and H* 2000, emphasised that children should be listened to and taken seriously. Indeed, that view was reflected in the Adoption and Children Act 2002. The relevant clause in that Act has not so far been enforced. The issue is particularly important if the child is frightened and does not want to see a violent or abusive parent. To enforce contact in such circumstances could itself be regarded as a form of abuse to the child.

The amendment would also require the court to take account of the behaviour of the contact parent, including any risk they present to the safety of the child or the other parent. As I said, during the contact period and the point of the enforcement order, the child or parent is most at risk of violence. In the Government’s reply to the report from the Joint Committee that scrutinised the Bill, they stated that reasonable excuse

“could of course include genuine concerns about safety, either of the child or of the parent”.

The amendment aims to express that intention in legislation and to ensure that contact is not enforced in cases where domestic violence is likely to endanger the child, the non-abusing parent or any other family member.

Mrs. Maria Miller (Basingstoke) (Con): One of the main provisions of the Bill is to increase the power of enforcement, which we all agree is important within the overall context of ensuring children’s safety, but we should also always consider children’s welfare, which is a broader issue.

Proposed new subsection (3A) deals with what constitutes a reasonable excuse. Opposition Members are concerned about whether the court should be given directions on what might constitute such an excuse.

Column Number: 90

Paragraph (a) of the proposed subsection would involve children in that consideration, but if the court has to look to them to endorse an excuse made by a parent, they may be put at risk or in a difficult situation. We question whether that is in line with the paramount welfare of the child. Is it in the child’s best interests to be in that situation?

Paragraph (b) proposes that the courts should take the behaviour of the parent into consideration, but that is a broad requirement. How will the court do it? Will the expression on the face of a parent be taken into consideration as behaviour? Must the behaviour be toward the child or someone else in court? We think that it is probably best for the court to define what is a reasonable excuse, in the normal way.

Proposed new subsection (3B) suggests that there should be a risk assessment if a court order has been breached and enforcement is required. However, there is a tautology in the amendment. Lord Adonis pointed out in the other place that, in making the original contact order, the court will have undertaken a thorough evaluation of what is in the paramount interests of the child, and in that evaluation safety would be an important issue. Risk assessments are already undertaken if, at any time, a Children and Family Court Advisory and Support Service officer has cause to suspect risk of harm to a child.

The hon. Member for Luton, South (Margaret Moran) will say whether I am wrong, but the amendment assumes that when an enforcement order is needed, child safety is always the overwhelming concern. That does not seem to be borne out by the facts, as we have already fully debated. We all agree that the welfare of the child is of paramount importance, and within that safety is a vital element, but a speedy resolution of problems is also in the child's best interests. It is important that contact with a non-resident parent is put in place speedily when an enforcement order is made; we should not build in delays, as the amendment may do.

Clause 7 already contains adequate provisions on safety, and our view is that the amendment may cause enforcement of contact orders to be erroneously delayed without good reason, which is not in the best interests of the child. For that reason, we do not support the amendment.

Mr. David Kidney (Stafford) (Lab): I am disappointed with the Opposition's response, because it is vital not to lose focus on the paramount importance of children's welfare as soon as there is a problem between parents. As a result of the way in which the Bill is drawn, the court might take a lesser interest in the welfare of the children when focusing on the behaviour of the parents. It is vital that we do not let the notion of children's welfare as the paramount consideration become eroded. That is why I support the amendment very strongly.

9.15 am

Mrs. Miller: Perhaps the hon. Gentleman could give a little more detail on how he thinks the Bill erodes the safety of the child. I do not follow his argument.

Column Number: 91

Mr. Kidney: Certainly. In any section of the Children Act 1989, and anywhere in the Bill except clauses 4 and 5, the welfare of the child is paramount. If there is any risk of harm to the child, the court should be alert to that and take steps to protect the child. It may suddenly be faced with an enforcement problem because, for example, a mother who does not live with the child demands contact and has a court order saying there should be contact. She may complain that the dad has not allowed the contact, and she will want the order enforced.

I am concerned that in such cases the Bill says that the welfare of the child is a consideration, but not the paramount one. I am worried that people will focus on whether dad was reasonable on the day when he did not allow contact, or whether he should be punished by ensuring that there is contact. There is an amendment to be considered later about compensatory contact, as if contact were a matter of reward for an innocent parent against a guilty one. That is absolutely the wrong approach.

Ann Coffey (Stockport) (Lab): When the subject was discussed in the Committee that considered the draft Bill, I was slightly confused. My understanding of an enforcement order is that a court decides whether to make the parent do a period of unpaid work or to send them to jail. When we discussed that, we considered the way in which magistrates interpret the law. For example, the paramountcy of the child cannot be the major consideration at that time, otherwise no parent of any child would ever be sentenced. I remain slightly confused.

Mr. Kidney: I recognise my hon. Friend's concern; it is one about which I feel very strongly. The courts are reluctant to impose either of the existing enforcement powers—fines or going to prison for contempt of court—because they foresee a harm to the child. If they take away the caring parents' money, the child's care suffers. If the parents are taken away to prison, the child suffers. We politicians have been casting around for another punishment that the courts can apply to ensure compliance.

I very much support the idea of unpaid work. It is a really neat way of bringing home to people that they must obey court orders. I am all for standing up for the authority of court orders, and children should be brought up to believe that we should all obey court orders. It is not in a child's best interests for a parent to say, "I am breaking court orders because I'm putting my interests before yours."

I am all for unpaid work, but enforcement should not be about making contact take place—after all, we are talking about enforcement of the court order, however the punishment or the means of making the parent take account of it is phrased—so that the court order is effected. I am concerned about forcing contact between a child and a parent when issues regarding that child's safety may have arisen during the proceedings which were missed by risk assessment on day one of the court case, and a parent, or the child themselves, has made them known to people in connection with the case.

Column Number: 92

Mrs. Miller: The hon. Gentleman is surely aware that a concern about a child's safety can be raised and will be investigated under other clauses. Perhaps he is concerned that the child's safety is not adequately dealt with in contact orders. I was not aware of that before; it is something that is considered in great detail when contact orders are initially put in place. If further concerns come to light after the contact order is put in place, CAF/CASS officers may be informed, and a risk assessment undertaken, which can then be taken into consideration. I am still striving to find where the problem is in the process.

Mr. Kidney: I return to the same point: the court order has been made at some point in the past, there is a dispute about whether it has been complied with, and enforcement proceedings take place to make a parent comply. That does not imply any further application to change the existing order so that the child's welfare becomes the paramount consideration again, unless we amend the Bill to ensure that

it is clear that the child's interests are paramount even at the enforcement stage. If we leave the Bill as it is, there may not be another opportunity before something terrible happens.

In any other situation, the child's interests would be paramount. I have mentioned the UN convention on the rights of the child. Article 3 says:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

The court proceedings relate to a child, and the child's interest should be paramount. Contrary to what the hon. Member for Basingstoke (Mrs. Miller) said, it is perfectly reasonable for the court to have regard for the wishes, views and expressions of interest of children who are the subject of enforcement proceedings.

There is a very good briefing, which I hope we have all received, from National Family Mediation. It makes clear that seeking children's views is a core activity of its mediators, and that it does not imply any harm to or difficulty for children. Although some people go further than I would—perhaps a bit too far, by saying that in any such proceedings, children should be separately represented in court—we should expect the children's interest to be ascertained by someone. It might be the CAFCASS officer, a child's advocate—a citizen's advocate, not a lawyer—who represents them in proceedings, or a lawyer by separate representation in the proceedings. All those options could be considered to find the right one with which to proceed.

In moving the amendment, my hon. Friend the Member for Luton, South mentioned the Government's response to the Joint Committee's report on the draft Bill. She mentioned the first part of the Government's response in paragraph 14 on page 4, which says that an excuse for not complying with a court order

“could of course include genuine concerns . . . either of the child or of the parent.”

Column Number: 93

That was the quotation. However, the next sentence says:

“In response to the concerns raised, we acknowledge that a more explicit signal of this is needed, and will consider how best to ensure that this is clearly understood.”

I look to my right hon. Friend the Minister to give a more explicit signal of what is needed.

Annette Brooke (Mid-Dorset and North Poole) (LD): I support the general principles behind the amendment. Proposed new subsection (3A)(a) is right to ensure that we ascertain the views of the child—obviously in proportion to age and maturity. We must establish best practice for the way in which the wishes and feelings of the child are ascertained. There might be the fear that one parent was manipulating the child to give a particular view, and the caveat that we must develop best practice is vital. It is ridiculous to enforce something that distresses the child come what may. If there is manipulation, we still need to get behind what is distressing the child to try to address

it in some other way. It is important to work towards that with the amendment.

On proposed new subsection (3B)(a), we must ensure that the Bill has the right balance and checks. In a recent constituency case, of which I shall not give full details, contact was allowed some time ago, within the mother's premises. I have heard only one side of the story, but I do not doubt that the mother is terrified about the contact and what is going to happen. There has been an enormous time lag in getting the matter back to court, and the concern is either that the risk might not have been ascertained properly, and would not have been even with the new provision in clause 7, or that the domestic violence may occur during the stressful time after the break-up. I do not accept that the problem is always one of child safety. I just want to ensure that there are sufficient checks because harm could come to the child who witnesses violent behaviour while waiting months and months for the case to return to court. I want to get the right balance.

I am concerned about game-playing, with children being piggy in the middle and mothers or fathers being deprived of seeing their children. In the case that I mentioned, I could imagine the child being seriously injured mentally, if not physically. The amendment is important and contains important principles.

Margaret Moran: I am disappointed with the response of the hon. Member for Basingstoke, but not with that of the hon. Member for Mid-Dorset and North Poole (Annette Brooke), who was supportive. I fear that the hon. Member for Basingstoke is wrong on two counts. The paramountcy principle is reduced in clauses 4 and 5, and the courts are required to take into account only those things that pertain to risks to the child, not to enforcement. If the paramountcy principle is important, we must ensure that it runs throughout the Bill.

Mr. Kidney: Is my hon. Friend winding up for the defence?

Column Number: 94

The Chairman: The hon. Member for Luton, South indicated that she wanted to come back on that point and I thought that she wanted to clarify the position to make it easier for the Committee to understand. I hope that the Committee accepts that. She will, of course, have a chance to wind up after the Minister has spoken. I hope the Committee accepts that the hon. Member is trying to be helpful.

Margaret Moran: I was going to be brief because the Minister wants to respond.

I want to clarify two points. First, the paramountcy principle does not run throughout the Bill. Secondly, the hon. Member for Basingstoke referred to the potential danger to the child of giving evidence at that point. That issue was dealt with in previous legislation when we introduced protection for vulnerable witnesses. The principle that children are able to give evidence and to give voice to their concerns has also been accepted in the Adoption and Children Act 2002.

The Chairman: I hope that that was helpful.

Beverley Hughes: I know that my hon. Friend always tries to help the Committee and that she has done a great deal to ensure that safeguarding children, particularly in situations of domestic violence, is taken seriously by the Government when

formulating legislation and policy. She is very knowledgeable on that matter.

We have had a good debate in which the concerns on both sides of the argument have been aired in one way or another. The purpose of the amendment is to ensure that the court takes full account of safety considerations for both the child and anyone with whom the child is living when making an enforcement order. When determining whether a person has reasonable excuse for failing to comply with a contact order, it would require the court to consider any objections the child may make to the contact arrangements and the behaviour of the non-resident parent. The amendment would prevent the court from making an enforcement order unless it has considered a risk assessment in respect of the child and any person with whom the child lives, and is satisfied that the safety of the child and any person with whom the child lives will not be compromised by such an order.

The amendment raises the question of at what point the court must consider those serious issues relating to contact. The aim of the enforcement provisions is to ensure that the contact that the court has already judged to be in the best interests of the child takes place. Clause 1 requires the court to take into account the child's ascertainable wishes and feelings and any harm that they are at risk of suffering before it makes a contact order. As well as the new provisions to enable risk assessments to take place, additional measures, such as the new gateway forms and the case law requirement that courts hold finding-of-fact hearings if there are allegations of harm, will ensure that safety can be addressed at any point before contact is ordered. The main problem with the amendment is that it would reopen the welfare issues that will have been fully considered when the contact order was made.

Column Number: 95

9.30 am

There are numerous ways in which the views of the child may come before the court. When the contact order is made, the court will have ample opportunity to address the wishes and feelings of the child and any safety concerns. We expect that contact orders will fully take into account all those issues. The question then becomes what happens if the court's carefully considered and constructed contact order, which was decided in the best interests of the child's welfare, is breached. At that point, it would not be right automatically to open up some of the issues that the court will already have addressed in making the contact order, which is what the amendment would do.

Notwithstanding that, and as a safety measure, the Bill provides that an enforcement order may be made, but only if there was no reasonable excuse for breaching the contact order. The amendment would impose on the court specific factors that it must consider when deciding whether there was a reasonable excuse. As I said, the child's wishes and feelings about contact will already have been addressed. The behaviour of the non-resident parent may or may not be relevant to the case. If it is relevant, the court will consider it, but it will not be relevant in many cases. For example, the resident parent could argue that the car broke down, or that the child was ill and could not attend, and would have a reasonable excuse, but such excuses would not have anything to do with safety issues. Therefore, it is unnecessary to require the court to consider the behaviour of the non-resident parent in every circumstance.

Proposed new subsection (3B) would require the court always to consider a risk

assessment before making an enforcement order, and to be satisfied that the enforcement order would not compromise the safety of the child. However, it would be too onerous on the court and would constitute considerable delay to require a risk assessment every time the court seeks to make an enforcement order, as many contact orders will be breached for reasons that have nothing to do with the safety implications of the order.

The Bill provides sufficient protection for those cases where safety issues arise. First, the requirement that the court cannot make an enforcement order if there is a reasonable excuse for breaching the contact order means that the court is bound to take into account the resident parent's concerns for her safety or the safety of the child.

Secondly, the court is required to consider the likely effect of an enforcement order on the person against whom it is made, including considerations of that person's safety. Thirdly, the court must ensure that the enforcement order is proportionate to the seriousness of the breach and that it will make contact work. Those requirements would not be met if the enforcement order forced one parent, or the child, into a dangerous situation.

Fourthly, the court must take into account the welfare of the child when making an enforcement order. My hon. Friends the Members for Luton, South

Column Number: 96

and for Stafford (Mr. Kidney) believe that at this point the welfare of the child should be of paramount importance, whereas in case law judges have taken the position that the welfare of the child is a material consideration but should not be paramount. I cannot explain the reason for that better than my hon. Friend the Member for Stockport (Ann Coffey) did. The issue for the court is to make enforcement work.

Everyone is agreed that the orders give the courts a range of responses to non-compliance short of those available through contempt that they are more likely to be able to use, because fines and imprisonment are not used routinely but for good and understandable reasons. There is a danger that if we make the welfare principle paramount in relation to a child's short-term distress, for example—a matter raised by my hon. Friend the Member for Stockport—the courts might feel constrained in implementing the very orders that we want to be at their disposal.

My hon. Friend the Member for Stafford said that the welfare of the child is paramount in all parts of the Children Act 1989, and it is certainly the pervading principle of that Act, but it actually states that welfare is paramount in any question relating to the child's upbringing. The clause is concerned about the enforcement of contact that the court has said is in the child's interests, but it is not predominantly and in a paramount way about upbringing.

Finally, and most importantly, the effect of clause 7, which was added to the Bill in the other place, places a duty on CAFCASS to undertake a risk assessment whenever it has cause to suspect that the child concerned is at risk of harm. That duty must be exercised at any point in the process, including when enforcement orders are under consideration.

My hon. Friend the Member for Luton, South referred to section 122 of the Adoption and Children Act 2002, which provides for the representation of children in public law proceedings. I appreciate that there is a strong wish for the rules to be made under that rule-making power. We intend to proceed in that direction but we need to

consider the outcome of research into the operation of rule 9.5 of the family proceedings laws to inform our consideration.

I hope that I have reassured my hon. Friend that I do not dismiss the serious matters she has raised. However, at this point in the process it is important, first, to allow enforcement orders to proceed, and, secondly, to ensure that there are sufficient levers in the provision for the court to consider safety considerations fully at that point if necessary. I therefore hope that my hon. Friend will ask leave to withdraw the amendment.