Excerpts from Hansard on Crime and Disorder Bill 1998 concerning racially aggravated offences and sentencing

Why create separate new offences?

- **Increased sentences**

"The new 'aggravated' offences will in future attract higher sentences." [Lord Watson 16.12.97 2nd Reading Vol 584- 550]

"[The clauses] rightly reflect the fact that racial motivation is an aggravating factor which it is proper to reflect in sentencing decisions and also in terms of maximum penalties." [Lord Dholakia 16.12.97 Vol 584- 576]

- **Incentive to police and CPS**

"In turn, that should have the effect of providing an incentive to police and prosecutors to search for a racial motive behind crimes that hitherto has been rare." [Lord Watson 16.12.97 Vol 584- 550]

- **Message / Symbolic**

"We need to instil in our communities confidence that crimes of racial violence and racial harassment will be dealt with seriously…It is a major step forward and offers some reassurance to ethnic minority communities about the Government's stated intention to be tough on crime and on the causes of crime." [Baroness Amos 16.12.97 Vol 584- 585]

"The Bill makes two important improvements to the current law. It increases maximum sentences in relation to racially aggravated crime. Also, it creates the offence of a racially aggravated crime. Those new crimes are in the Bill in order to underline the importance that this Government attach[es] to stamping out racially aggravated crime. The effect of including the provision in the Bill and making it a crime is that it will compel the evidence gatherers in specific cases to focus on the issue of racial aggravation in respect of those matters. We believe that this is a good thing and an important message to send to the world." [Lord Falconer 16.12.97 Vol 584- 598]

"The Government believe, in my view quite correctly, that it is not sufficient simply to say that racial aggravation is a factor which goes to sentence. It is in certain cases something which, when added to other matters, should itself create criminal liability. // We believe that that gives a much stronger message than simply the important matter of adding to the sentence if an offence is racially aggravated. We of course accept that that is an important matter in itself." [Lord Falconer 12.2.98 Vol 585- 1272]

"The other point, which is extremely important, is that this is symbolic. It is a symbolic message to our nation as a whole that we will not tolerate racially motivated aggression, assaults or bullying." [Baroness Hilton 12.2.98 Vol 585- 1276]

"I know that legislation will not change those people who commit racial assaults, but it is an important step along the way and it sends a message from this place that we will not tolerate such action." [Keith Vaz 8.4.98 Vol 310- 425]

Why not merely amend sentencing policy alone?

"Clause 68 [section 82], which we wholly support on these Benches, requires judges to treat racism as an aggravating factor. May it not be better simply to extend Clause 68 across the board and if existing maximum sentences are inadequate to cope with racially aggravated offences, extend those maximum sentences?" [Lord Goodhart 16.12.97 Vol 584- 588]

"Unlike [Baroness Amos] I have doubts about Clauses 22 to 25 dealing with racially aggravated offences. In my view, those clauses are well meaning but could be counter productive. The problem is that there may well be pressure on the CPS not to prosecute for aggravated offences because of the extra time and cost involved and the evidential problems in proving racial motivation. As a consequence, where an accused is not charged with an aggravated offence or has been charged with an aggravated offence but is convicted only of the simple offence, the judge cannot properly take racial motivation into account as an aggravating factor in sentencing, however clear in practice it may be." [Lord Goodhart 16.12.97 Vol 584- 588] [and see below under sentencing]

"They [OAPA offences] already attract severe punishment. Therefore when the Government speak of "new crimes" they are not making illegal what is presently legal but are simply proposing that existing offences deserve a more severe punishment if any racial or national element comes into the equation." [Lord Monson 12.2.98 Vol 585- 1265]

"[Quote from R v Ribbans and Clause 68] If we are to send a clear message from this place that racial motivation is an aggravating feature of a crime of any kind, why is it necessary, in this case, to create those three particular offences?" [Lord Carlisle 12.2.98 Vol 585- 1287-8]

"I said that it is necessary to create a new criminal offence for two reasons. First, it sends a clear message that it is a criminal offence. Secondly, without creating a new criminal offence one cannot increase the sentence because that is the only reason for increasing the sentence." [Lord Falconer 12.2.98 Vol 585- 1289]

"...there is a big difference between making a new offence and relying on a feature of the offence as merely aggravation. If you make it a new offence, you are putting into that offence a new ingredient; namely, the racial side of the offence. By putting that ingredient in, you must put before the jury all the facts and circumstances that justify the

existence of the ingredient upon which you rely. // If it merely aggravation, that may well come out as a side issue. It may perhaps be developed after a conviction but, at that stage, there could be a contest as to the extent of the racial motivation which the judge may then have to deal with himself by hearing additional evidence, the jury by then having finished its task. Therefore, by creating the new offence, you emphasise the racial aspect of it by requiring that particular ingredient to be properly established. // By relying upon the racial motivation purely as an aggravating aspect, it becomes merely part of the background and not part of the offence itself. Moreover, as part of the background, it may hardly emerge at all during the trial of the substantive offence. When it does emerge relative to sentencing, there may be the complication of an issue as to the seriousness arising therefrom. By making it a separate offence, it would be the members of the jury who would make all the relevant findings; by keeping it merely as aggravation, you are mixing up the functions of the judge and the jury. I assume that the Government take the view that, in the particular circumstances, that is not the desirable way of dealing with the matter." Lord Ackner 12.2.98 Vol 585- 1294-5]

"If you want to take care of racial violence or racism and you want to create a new class of offences it seems to me that you should create such offences for the purpose of giving notice to society that you treat such matters seriously. // To create some offences in order to increase punishment and not to create others because punishment already exists seems to me to be a confusion of motives. Even if it was, so to speak, a matter of duplication, and even if it was true that under certain sections you already have life imprisonment and you cannot go further, I still think that creating such offences of racial motivation would send out a very good signal that such matters are taken more seriously....I would be happier if on demonstrative grounds rather than instrumental grounds a point was made across the board that, wherever motivation was involved, society would take such matters more seriously than would otherwise be the case." [Lord Desai 12.2.98 Vol 585- 1295]

"We already have a high enough sentence to encompass racial motivation in the existing sentences...There are certain offences for which the penalty is life. We believe that that is a high enough maximum to deal with racial motivation. We believe that one neither could nor should increase the sentence. That being the case we think it pointless and silly to introduce a new element in the crime as a means of increasing the sentence for that particular crime." [Lord Falconer 12.2.98 Vol 585- 1297]

"If it is desirable to have a new offence because of a new ingredient, you must have that irrespective of the fact that you may think the maximum is sufficient, because it alters the presentation of the case and it alters who makes the decision, the judge or the jury." [Lord Ackner 12.2.98 Vol 585- 1297-8]

"But the basis of the logic for the introduction of these three offences is...that we introduce them only where we think the penalty is insufficient...there is a perfect symmetry..." [Lord Falconer 12.2.98 Vol 585- 1298]

"We believe that the Government are right in saying to the trial judge quite clearly, "You must consider all the facts of the case, including aggravating factors such as racial

motivation, when passing sentence." We have put that on the face of the Bill because we believe that racial motivation and violence is vile and foul in a way that other motives are not." [Lord Williams 12.2.98 Vol 585- 1281]

Why choose these specific offences?

"If one wishes to indicate by the conviction the gravity of the offence by having a special offence why not have an offence of causing serious bodily harm with intent by racial aggravation or robbery by racial aggravation? If it is to mark the nature of the offence by a particular offence the logic is to apply to all types of offences not merely those limited by the Bill." [Lord Carlisle 12.2.98 Vol 585- 1289]

"What I am seeking to add is the offence under Section 18 of the Offences Against the Person Act...[likely criticism that already carries maximum of life imprisonment]...However, I believe that misses the point in that, first, life is only the maximum. It is not the same as in the case of murder where there is a statutory punishment of life imprisonment, and therefore it would not be advisable to add that to the Bill. But if Parliament, through the Bill, wants to argue...that racially aggravated offences should be treated very seriously, and if it therefore wishes to include the lesser offences and not the more serious offence[s], such as offences under Section 18, it would seem to imply that the courts could not take racial aggravation into account despite what Section 68 and 79 say later on....These clauses are not necessary in terms of increasing the offence...I can accept that they are necessary if one wants to create an offence, but they are not necessary in terms of increasing the maximum offences. The courts already have that power." [Lord Henley 12.2.98 Vol 585- 1278-9]

"[Difficulty for judge in directing jury if defendant indicted under sections 18 (where racial aggravation is not relevant) and 20 or 47 (where it would be)] The situation is a recipe for disaster or at least for considerable confusion when the judge directs the jury." [Lord Henley 12.2.98 Vol 585- 1279]

"Our purpose is to provide increased sentences for racially aggravated crime directed against the person. Where one has a basic offence which already carries the maximum sentence of life imprisonment...life imprisonment is already the maximum. Therefore, the aggravated offence is not required in practical terms because the sentence cannot be increased. That is why we have not included murder or manslaughter in the list of offences. // It is commonplace- it is sadly, notorious- that some murders or manslaughters are racially motivated. But Clause 68 (section 82) is there for that considered purpose. It will require the court dealing with offences not listed in the Bill to consider as an aggravating factor evidence of racial motivation or hostility. The existence of the aggravating factor will merit- I suggest, will require- an increased sentence within the sentencing scale that the judges are well familiar with. [Lord Williams 12.2.98 Vol 585-1280-1] (see below)

"I fully understand why in Clause 23 we have not got racially aggravated Section 18...because life imprisonment is the maximum sentence and you do not need to increase the sentence. I am entirely in agreement with the Government that a five-year maximum under Section 20 is inadequate, because it is exactly the same as the five-year maximum under Section 47 and that makes no sense whatever. Therefore one does not have the flexibility in sentencing that one ought to have when faced with these various degrees of violence and assault." [Viscount Colville 12.2.98 Vol 585- 1282]

"It seems to me there is no reason why one should not if one wished, subject to the trial judge's views, charge Section 18, racially aggravated Section 20 or plain Section 20. It is not beyond the wit or the experience of judges, in my experience, to ask them specifically to say "What have you found?" Where there is no specific finding made by the jury because the indictment does not require them to, then Section 68 is there to give the judge sentencing power." [Lord Williams 12.2.98 Vol 585- 1283]

"...We wished, as a matter of policy, to create new offences with a racial component in them, having considered the wider context of the maxima presently available. Having gone through the offences in that way, we came to the conclusion that the new offences as specified were appropriate. We looked at the maxima available, thought of the practical consequences, and decided that the proper remedy was to introduce Clause 68, which we have done. I see no inconsistency there." [Lord Williams 12.2.98 Vol 585-1286-7]

"In my view and in the view of the Government, the logical and honest way to do that is to provide that where the offence is racially aggravated, and that becomes an element of the offence, then and only then is the increased sentence available. That is logical, fair and right." [Lord Falconer 12.2.98 Vol 585- 1292-3]

"If that is so, why does that principle not carry through to Section 18 and other offences? It is surely not being assumed that in all racially motivated cases the maximum sentence is going to be passed but that it should be made clear that it is of itself a more serious offence which could bring a higher punishment in the normal scheme of things. If that is so, surely, when dealing with grievous bodily harm with intent, there is an argument for saying that that should have an additional aggravated offence which, although the maximum may still be the same, means in practice, within that maximum, that the accused, rather than receiving a sentence of five years, is likely to receive a sentence of seven years." [Lord Carlisle 12.2.98 Vol 585- 1293]

"With respect, no. If the conclusion reached by the Government...is that the existing maximum sentence for an existing crime is sufficiently high even to encompass a racially aggravated crime, then there is no basis either for increasing that maximum or for creating a new crime. On that basis, it is believed the judge is able to put the racially aggravated crime within a scale where the maximum does not need to be increased." [Lord Falconer 12.2.98 Vol 585- 1293]

"[Amendment proposed to include Section 18] in the list of racially aggravated offences and by that means make the job of those involved in the prosecution much simpler and prevent that particular problem from arising." [Lord Henley 17.3.98 Vol 587- 689]

"...we are not creating new racially aggravated Section 18 offences. Nevertheless, the judge can increase the sentences for racially aggravated Section 18 offences as a result of Clause 69 which permits it to be taken into account when sentencing. That is why Section 18 has not had added to it the racially aggravated element as part of a crime." [Lord Falconer 17.3.98 Vol 587- 690-1]

"...the Government do not believe that it is necessary or appropriate to create the new offences he suggests with no increase in sentence simply to offer a jury alternative verdicts...In practical terms, the suggested amendments would require the prosecution to meet the additional hurdle of proving racial aggravation without providing any additional sentence. Where there is evidence of racial aggravation, Clause 69 already enables the court to impose a higher sentence." [Lord Falconer 17.3.98 Vol 587- 700-1]

Arguments for the 'Baroness Flather' amendment

"[Introduced simpler amendment previously]. One part simply provided that when racial motivation was proved in any crime before a court, then it should form an aggravating factor increasing the penalty automatically. The point was instead of isolating different types of crimes for this particular purpose, we should have a blanket rule that any crime where racial motivation was proved in court would carry a higher penalty than other crimes. //The other part of that amendment, which was equally if not even more important, imposed a duty on the Crown Prosecution Service to disclose to the court any racial element- not motivation- that was contained in that particular crime. [Danger of plea-bargaining]...It is for the court to decide whether or not a defendant is guilty. It is not for the Crown Prosecution Service to make a decision on its own. If it keeps fudging the racial element in various crimes, the courts will never become familiar- nor will the public- with the incidence of racial elements in different crimes...It is extremely important that the duty should be laid on the Crown Prosecution Service in all cases, whether or not there is a plea to a lesser offence, to put before the court any racial element in that crime so that that can be taken into account even when the defendant is pleading guilty." [Baroness Flather 16.12.97 Vol 584- 555]

"The noble Baroness, Lady Flather, asked why it does not apply to all crimes. Practically speaking, one cannot attach racial aggravation as an element to every crime. However, section 68 [82] of the Bill says that in all crimes racial aggravation will be a factor that can increase the sentence. We therefore believe that we have gone a significant way to meet what the noble Baroness, Lady Flather, would wish." [Lord Falconer 16.12.97 Vol 584- 598]

"I have never been certain that special offences needed to be created. I thought that a catch-all clause might have been sufficient, but having put this clause on the face of the

Bill, there is an aspect which has not been addressed properly; that is, that a considerable amount of behind-the-scenes activity, commonly known as plea-bargaining, takes place before cases come before the courts...the racial element of that offence might not then be produced before the courts. I am deeply worried that if that takes place, the very purpose of [the Clauses] will be lost. Sentences taking into account the element of aggravation will not be passed on the defendant, as the evidence of the racial element will not be produced before the courts...It would be greatly disheartening if the Bill led ethnic minorities to believe that the Government had at last grasped the nettle and would pursue that unpleasant aspect of our society with full commitment, only then to find that few prosecutions came before the courts. They may then come to the conclusion that there is only a small element of racial harassment, racial crimes and racial violence." [Baroness Flather 17.3.98 Vol 587- 251-2]

"I support the noble Baroness because there is a weak link and a missing piece of the jigsaw in the legislation on racial attacks and harassment...We are [by the proposed amendment] putting a duty on the Crown Prosecution Service to ensure that it brings out racial motivation in the cases which are being handled...I believe that the way to establish the confidence of the minority is not simply by way of the wheeling and dealing that goes on in terms of plea bargaining and the discontinuance of cases but positively so that all racial motivation is brought before the court which is to decide sentence." Lord Dholakhia 17.3.98 Vol 587- 252-3]

"[same goal but cannot agree to amendment] There will be some cases where, although there is some evidence of a racial element to a crime, there will not be enough evidence to meet the racial aggravation test. There will also be cases where the evidence of a racial element will not be admissible, or where the evidence is uncorroborated and unreliable. In those circumstances, the prosecutor will, as he does in every case, have to use his discretion to judge whether it would be in the public interest to charge the racially aggravated offence, taking into account the likelihood of obtaining a conviction...We cannot have special rules in relation to racially aggravated offences...We anticipate that it will be exceptional for such information not to be brought to the attention of the court, and only then for legally-supportable reasons...The creation of these new offences will focus the attention of the police and the CPS on the importance of gathering and assessing the evidence relating to the racial element. We want to send a strong message that racist crime is unacceptable but we also need to ensure that these provisions are effective in practical terms." [Lord Falconer 17.3.98 Vol 587- 254-5]

" Would you rather that someone got away with something, or would you rather that person was charged with a racially motivated crime? I fear that, in the hope of obtaining a conviction, the Crown Prosecution Service may prefer to fudge the racially motivated crime aspect and charge the defendant with another offence...This is one of the reasons I have never supported the idea of special crimes with racial motivation as that creates a division between other crimes and specifically racially motivated crimes." [Baroness Flather 17.3.98 Vol 587- 255]

CRIME AND DISORDER ACT 1988

s 1 Anti-social behaviour orders.

(1) An application for an order under this section may be made by a relevant authority if it appears to the authority that the following conditions are fulfilled with respect to any person aged 10 or over, namely--
(a) that the person has acted, since the commencement date, in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and
(b) that such an order is necessary to protect persons in the local government area in which the harassment, alarm or distress was caused or was likely to be caused from further anti-social acts
by him;
and in this section "relevant authority" means the council for the local government area or any chief officer of police any part of whose police area lies within that area.
(2) A relevant authority shall not make such an application without consulting each other relevant authority.
(3) Such an application shall be made by complaint to the magistrates' court whose commission area includes the place where it is alleged that the harassment, alarm or distress was caused or was likely to be caused.
(4) If, on such an application, it is proved that the conditions mentioned in subsection (1) above are fulfilled, the magistrates' court may make an order under this section (an "anti-social behaviour order") which prohibits the defendant from doing anything described in the order.
(5) For the purpose of determining whether the condition mentioned in subsection (1)(a) above is fulfilled, the court shall disregard any act of the defendant which he shows was reasonable in the circumstances.
(6) The prohibitions that may be imposed by an anti-social behaviour order are those necessary for the purpose of protecting from further anti-social acts by the defendant--
(a) persons in the local government area; and
(b) persons in any adjoining local government area specified in the application for the order;
and a relevant authority shall not specify an adjoining local government area in the application without consulting the council for that area and each chief officer of police any part of whose police area lies within that area.
(7) An anti-social behaviour order shall have effect for a period (not less than two years) specified in the order or until further order.
(8) Subject to subsection (9) below, the applicant or the defendant may apply by complaint to the court which made an anti-social behaviour order for it to be varied or discharged by a further order.
(9) Except with the consent of both parties, no anti-social behaviour order shall be discharged before the end of the period of two years beginning with the date of service of the order.
(10) If without reasonable excuse a person does anything which he is prohibited

from doing by an anti-social behaviour order, he shall be liable--
(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or
(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.
(11) Where a person is convicted of an offence under subsection (10) above, it shall not be open to the court by or before which he is so convicted to make an order under subsection (1)(b) (conditional discharge) of [section 12 of the Powers of Criminal Courts (Sentencing) Act 2000] [FN1] in respect of the offence.
(12) In this section--
"the commencement date" means the date of the commencement of this section;
"local government area" means--
(a) in relation to England, a district or London borough, the City of London, the Isle of Wight and the Isles of Scilly;
(b) in relation to Wales, a county or county borough.

[FN1] words substituted by Powers of Criminal Courts (Sentencing) Act (2000 c.6), Sch 9 Para 192

s 28 Meaning of "racially aggravated".

(1) An offence is racially aggravated for the purposes of sections 29 to 32 below if--
(a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial group; or
(b) the offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group.
(2) In subsection (1)(a) above--
"membership", in relation to a racial group, includes association with members of that group;
"presumed" means presumed by the offender.
(3) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above whether or not the offender's hostility is also based, to any extent, on--
(a) the fact or presumption that any person or group of persons belongs to any religious group; or
(b) any other factor not mentioned in that paragraph.
(4) In this section "racial group" means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.

s 29 Racially-aggravated assaults.

(1) A person is guilty of an offence under this section if he commits--
(a) an offence under section 20 of the Offences Against the Person Act 1861 (malicious wounding or grievous bodily harm);
(b) an offence under section 47 of that Act (actual bodily harm); or

(c) common assault,
which is racially aggravated for the purposes of this section.
(2) A person guilty of an offence falling within subsection (1)(a) or (b) above shall be liable--
(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine, or to both.
(3) A person guilty of an offence falling within subsection (1)(c) above shall be liable--
(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

s 30 Racially-aggravated criminal damage.

(1) A person is guilty of an offence under this section if he commits an offence under section 1(1) of the Criminal Damage Act 1971 (destroying or damaging property belonging to another) which is racially aggravated for the purposes of this section.
(2) A person guilty of an offence under this section shall be liable--
(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
(b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine, or to both.
(3) For the purposes of this section, section 28(1)(a) above shall have effect as if the person to whom the property belongs or is treated as belonging for the purposes of that Act were the victim of the offence.

s 32 Racially-aggravated harassment etc.

(1) A person is guilty of an offence under this section if he commits--
(a) an offence under section 2 of the Protection from Harassment Act 1997 (offence of harassment); or
(b) an offence under section 4 of that Act (putting people in fear of violence),
which is racially aggravated for the purposes of this section.
(2) In section 24(2) of the 1984 Act (arrestable offences), after paragraph (o) there shall be inserted--
"(p) an offence falling within section 32(1)(a) of the Crime and Disorder Act 1998 (racially-aggravated harassment);".
(3) A person guilty of an offence falling within subsection (1)(a) above shall be liable--
(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
(4) A person guilty of an offence falling within subsection (1)(b) above shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine, or to both.
(5) If, on the trial on indictment of a person charged with an offence falling within subsection (1)(a) above, the jury find him not guilty of the offence charged, they may find him guilty of the basic offence mentioned in that provision.
(6) If, on the trial on indictment of a person charged with an offence falling within subsection (1)(b) above, the jury find him not guilty of the offence charged, they may find him guilty of an offence falling within subsection (1)(a) above.
(7) Section 5 of the Protection from Harassment Act 1997 (restraining orders) shall have effect in relation to a person convicted of an offence under this section as if the reference in subsection (1) of that section to an offence under section 2 or 4 included a reference to an offence under this section.

CHILDREN ACT 1989

s 17 Provision of services for children in need, their families and others.

(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)--
(a) to safeguard and promote the welfare of children within their area who are in need; and
(b) so far as is consistent with that duty, to promote the upbringing of such children by their families,
by providing a range and level of services appropriate to those children's needs.
(2) For the purpose principally of facilitating the discharge of their general duty under this section, every local authority shall have the specific duties and powers set out in Part 1 of Schedule 2.
(3) Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child's welfare.
(4) The Secretary of State may by order amend any provision of Part I of Schedule 2 or add any further duty or power to those for the time being mentioned there.
(5) Every local authority--
(a) shall facilitate the provision by others (including in particular voluntary organisations) of services which the authority have power to provide by virtue of this section, or section 18, 20, 23 or 24; and
(b) may make such arrangements as they see fit for any person to act on their behalf in the provision of any such service.
(6) The services provided by a local authority in the exercise of functions conferred on them by this section may include giving assistance in kind or, in exceptional circumstances, in cash.
(7) Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part).
(8) Before giving any assistance or imposing any conditions, a local authority shall have regard to the means of the child concerned and of each of his parents.
(9) No person shall be liable to make any repayment of assistance or of its value at any time when he is in receipt of income support , [working families' tax credit] [FN1] or [disabled person's tax credit] [FN2] under the Part VII of the Social Security Contributions and Benefits Act 1992 or of an income-based jobseeker's allowance.
(10) For the purposes of this Part a child shall be taken to be in need if--
(a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;
(b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
(c) he is disabled,
and "family" , in relation to such a child, includes any person who has parental

responsibility for the child and any other person with whom he has been living.
(11) For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part--
"development" means physical, intellectual, emotional, social or behavioural development; and
"health" means physical or mental health.

[FN1] words substituted by Tax Credits Act (1999 c.10), Sch 1 Para 6 (d) (i)

[FN2] words substituted by Tax Credits Act (1999 c.10), Sch 1 Para 6 (d) (i)

s 23 Provision of accommodation and maintenance by local authority for children whom they are looking after.

(1) It shall be the duty of any local authority looking after a child--
(a) when he is in their care, to provide accommodation for him; and
(b) to maintain him in other respects apart from providing accommodation for him.
(2) A local authority shall provide accommodation and maintenance for any child whom they are looking after by--
(a) placing him (subject to subsection (5) and any regulations made by the Secretary of State) with--
(i) a family;
(ii) a relative of his; or
(iii) any other suitable person,
on such terms as to payment by the authority and otherwise as the authority may determine;
(b) maintaining him in a community home;
(c) maintaining him in a voluntary home;
(d) maintaining him in a registered children's home;
(e) maintaining him in a home provided in accordance with arrangements made by the Secretary of State under section 82(5) on such terms as the Secretary of State may from time to time determine; or
(f) making such other arrangements as--
(i) seem appropriate to them; and
(ii) comply with any regulations made by the Secretary of State.
(3) Any person with whom a child has been placed under subsection (2)(a) is referred to in this Act as a local authority foster parent unless he falls within subsection (4).
(4) A person falls within this subsection if he is--
(a) a parent of the child;
(b) a person who is not a parent of the child but who has parental responsibility for him; or
(c) where the child is in care and there was a residence order in force with respect to

him immediately before the care order was made, a person in whose favour the residence order was made.
(5) Where a child is in the care of a local authority, the authority may only allow him to live with a person who falls within subsection (4) in accordance with regulations made by the Secretary of State.
[
(5A) For the purposes of subsection (5) a child shall be regarded as living with a person if he stays with that person for a continuous period of more than 24 hours.
] [FN1]
(6) Subject to any regulations made by the Secretary of State for the purposes of this subsection, any local authority looking after a child shall make arrangements to enable him to live with--
(a) a person falling within subsection (4); or
(b) a relative, friend or other person connected with him,
unless that would not be reasonably practicable or consistent with his welfare.
(7) Where a local authority provide accommodation for a child whom they are looking after, they shall, subject to the provisions of this Part and so far as is reasonably practicable and consistent with his welfare, secure that--
(a) the accommodation is near his home; and
(b) where the authority are also providing accommodation for a sibling of his, they are accommodated together.
(8) Where a local authority provide accommodation for a child whom they are looking after and who is disabled, they shall, so far as is reasonably practicable, secure that the accommodation is not unsuitable to his particular needs.
(9) Part II of Schedule 2 shall have effect for the purposes of making further provision as to children looked after by local authorities and in particular as to the regulations that may be made under subsections (2)(a) and (f) and (5).

[FN1] added by Courts and Legal Services Act (1990 c.41), Sch 16 (I) Para 12 (2)

s 24 Advice and assistance for certain children.

(1) Where a child is being looked after by a local authority, it shall be the duty of the authority to advise, assist and befriend him with a view to promoting his welfare when he ceases to be looked after by them.
(2) In this Part "a person qualifying for advice and assistance" means a person within the area of the authority who is under twenty-one and who was, at any time after reaching the age of sixteen but while still a child--
(a) looked after by a local authority;
(b) accommodated by or on behalf of a voluntary organisation;
(c) accommodated in a registered children's home;
(d) accommodated--
(i) by any Health Authority, Special Health Authority[, Primary Care Trust] [FN1] or local education authority; or
(ii) in any residential care home, nursing home or mental nursing home, or in any

accommodation provided by a National Health Service trust
for a consecutive period of at least three months; or
(e) privately fostered,
but who is no longer so looked after, accommodated or fostered.
(3) Subsection (2)(d) applies even if the period of three months mentioned there began before the child reached the age of sixteen.
(4) Where--
(a) a local authority know that there is within their area a person qualifying for advice and assistance;
(b) the conditions in subsection (5) are satisfied; and
(c) that person has asked them for help of a kind which they can give under this section,
they shall (if he was being looked after by a local authority or was accommodated by or on behalf of a voluntary organisation) and may (in any other case) advise and befriend him.
(5) The conditions are that--
(a) it appears to the authority that the person concerned is in need of advice and being befriended;
(b) where that person was not being looked after by the authority, they are satisfied that the person by whom he was being looked after does not have the necessary facilities for advising or befriending him.
(6) Where as a result of this section a local authority are under a duty, or are empowered, to advise and befriend a person, they may also give him assistance.
(7) Assistance given under subsections (1) to (6) may be in kind or, in exceptional circumstances, in cash.
(8) A local authority may give assistance to any person who qualifies for advice and assistance by virtue of subsection (2)(a) by--
(a) contributing to expenses incurred by him in living near the place where he is, or will be--
(i) employed or seeking employment; or
(ii) receiving education or training; or
(b) making a grant to enable him to meet expenses connected with his education or training.
(9) Where a local authority are assisting the person under subsection (8) by making a contribution or grant with respect to a course of education or training, they may--
(a) continue to do so even though he reaches the age of twenty-one before completing the course; and
(b) disregard any interruption in his attendance on the course if he resumes it as soon as is reasonably practicable.
(10) Subsections (7) to (9) of section 17 shall apply in relation to assistance given under this section (otherwise than under subsection (8)) as they apply in relation to assistance given under that section.
(11) Where it appears to a local authority that a person whom they have been advising and befriending under this section, as a person qualifying for advice and assistance, proposes to live, or is living, in the area of another local authority, they shall inform that other local authority.

(12) Where a child who is accommodated--
(a) by a voluntary organisation or in a registered children's home;
(b) by any Health Authority, Special Health Authority, Primary Care Trust or local education authority; or
(c) in any residential care home, nursing home or mental nursing home, or any accommodation provided by a National Health Service trust
ceases to be so accommodated, after reaching the age of sixteen, the organisation, authority or (as the case may be) person carrying on the home shall inform the local authority within whose area the child proposes to live.
(13) Subsection (12) only applies, by virtue of paragraph (b) or (c), if the accommodation has been provided for a consecutive period of at least three months.
(14) Every local authority shall establish a procedure for considering any representations (including any complaint) made to them by a person qualifying for advice and assistance about the discharge of their functions under this Part in relation to him.
(15) In carrying out any consideration of representations under subsection (14), a local authority shall comply with any regulations made by the Secretary of State for the purposes of this subsection.

[FN1] words inserted by SI 2000/90 (Health Act 1999 (Supplementary, Consequential etc. Provisions) Order), Sch 1 Para 24 (4) (a)

Para 15

(1) Where a child lives, or is to live, with a person as the result of a residence order, a local authority may make contributions to that person towards the cost of the accommodation and maintenance of the child.
(2) Sub-paragraph (1) does not apply where the person with whom the child lives, or is to live, is a parent of the child or the husband or wife of a parent of the child.
Notes:
Act amended by Army Act 1955 (c.18), Sch. 5A para. 7(3)-(4) (as substituted by Children Act 1989 (c.41), s. 108(4)(6), Sch. 12 para. 8(2), Sch. 14 para. 27(4))