Written evidence submitted by Article 39 (CWSB48)

Introduction

1. Article 39 is a small, independent charity which fights for the rights of children and young people in institutional settings such as mental health units, prisons and children's homes. We promote and protect children's rights in England through awareness-raising of the rights, views and experiences of children; legal education; practice development; and policy advocacy, research and strategic litigation. Our name comes from Article 39 of the United Nations Convention on the Rights of the Child, which entitles children who have suffered abuse or other rights violations to recover in environments which nurture their health, self-respect and dignity.

2. Article 39 welcomes the Children's Wellbeing and Schools Bill and the measures within the Bill to improve the child protection system and the quality of children's social care. However, there remain a number of key areas that must be addressed if the Bill is to ensure that children and young people are sufficiently safeguarded and supported, and their rights upheld. These include:
    - The need for a duty to give due consideration to children's wishes and feelings, and involve them in family group decision making meetings (Clause 1);
    - Extending the support offered under 'Staying Close' provisions (Clause 7);
    - Reassurances on the types of accommodation that could be used for children deprived of their liberty under section 25 of the Children Act (Clause 10);
    - Introducing an amendment to remove the 'reasonable chastisement' defence for physically assaulting a child, thereby banning smacking.

Clause 1 – considering the wishes and feelings of children as part of family group decision-making meetings prior to application for a care or supervision order

3. Article 39 welcomes the amendment to the Children Act 1989 requiring local authorities to offer a family group decision-making meeting to parents and others with parental responsibility prior to making an application for an order under section 31 of the Children Act 1989.

4. However, we are very concerned that Part 1, Clause 1 does not include any requirement for the local authority and the family network to give due consideration to the child's wishes and feelings when making decisions; there is only a duty on the local authority to "seek the views of the child unless it considers that it would not be appropriate to do so" (subsection (9)). This is inconsistent with the Children Act 1989 which requires local authorities to ascertain and give due consideration to the child's wishes and feelings in a variety of contexts, including child protection, child in need assessments, and before making any decision about a looked after child.

5. Without amendment to put the child's perspective firmly at the centre, we fear this new statutory mechanism for avoiding children coming into care will put children at risk. Through our children's rights advice service and our work with independent advocates, we hear time and time again of teenagers desperately unhappy and frightened at home being pushed away by local authorities in the name of 'keeping families together'. Children in these circumstances have often suffered abuse and neglect over many years, as shown by a 2020 Child Safeguarding Practice Review Panel review obtained by Article 39 after successfully challenging government secrecy at an information rights tribunal. Successive inquiries into the deaths of children consistently show that the individual child's perspective was lost, with professionals focused on adult narratives and concerns.

6. It is vital that this legislation ensures that both children's wishes *and feelings* are obtained, since feelings are far wider in scope. Seeking to understand children's feelings will ensure that younger children, and children who choose not to express their views on where or with whom they would like to live, or who are deemed not to have capacity to influence a particular decision, remain central to decision-making.

7. In a similar vein, subsection (8) contains a very weak provision that a child may attend the family group decision-making meeting "when the local authority considers it appropriate". Given family group meetings will be making critical decisions about a child's safety and home life, there must be a clear entitlement for the child to participate, including with the assistance of an independent advocate, for Clause 1 to be compatible with Article 8 of the European Convention on Human Rights and Articles 12 and 3 of the United Nations Convention on the Rights of the Child (UNCRC). The Committee on the Rights of the Child's guidance on implementing Article 3 of the UNCRC, the best interests of the child, is clear that the child's perspective must be at the heart of this.

8. **Recommendation: Clause 1 should be amended to ensure that there is a clear entitlement for children to participate in family group decision-making meetings. Clause 1(9) should be amended to place a duty on the local authority to seek and give due consideration to the wishes and feelings of the child as part of this process**

Clause 7 – support for care leavers aged 18 to 25

9. Clause 7 places a new duty on local authorities to assess whether the welfare of a 'former relevant child' (an adult who spent at least 13 weeks in care starting when they were aged 14 and lasting at least a day beyond the age of 16) requires them to receive "staying close support".

10. Article 39 welcomes the government's recognition that it is wrong to force or expect young care experienced adults to leave the communities and areas in which they have laid down roots. Through our advice service, we hear often of young people aged 18

and older being told they must return to their home local authorities after they have become settled in a different local area following their corporate parent moving them there when they were children.

11. However, in the Bill, the nature of this staying close support is rudimentary, with subsection (4) listing support "to find and keep suitable accommodation" and "to access services relating to health and wellbeing, relationships, education and training, employment, and participation in society". Support is defined in subsection (5) as "the giving of advice or information" and "the making of representations". This does not take the rights of care leavers beyond what is already in law, namely the Children Act 1989, The Care Leavers (England) Regulations 2010 and the corporate parenting principles in the Children and Social Work Act 2017.

12. Furthermore, there is no duty in Clause 7 for the young person's perspective to be elicited or given any weight in the local authority's assessment of whether they need staying close support; the power to determine whether support is required, and then to decide the nature of this support, all rests with the local authority.

13. There is no provision in Clause 7 that gives care experienced adults any entitlement whatsoever to remain living close to the home or homes they lived in as children in care.

14. **Recommendation: Clause 7 should be amended to place a duty on local authorities to provide assistance, including financial assistance, to maintain a 'staying close' arrangement, as there is within section 23CZA of the Children Act 1989 for children wishing to 'stay put' in their foster homes between the ages of 18 and 21.**

Clause 8 – extension of local offer for care leavers

15. Clause 8 adds new requirements to the content of local authorities' published 'local offers' for care leavers (introduced through section 2 of the Children and Social Work Act 2017), which set out the services and support available to them until age 25 and beyond. Local authorities will have to set out their arrangements for "supporting and assisting care leavers in their transition to adulthood and independent living", and their arrangements around helping care leavers find and keep suitable accommodation and avoiding homelessness.

16. However, there are no new rights and entitlements for adult care leavers in relation to the provision of and funding for housing, or being able to stay in the area their local authority moved them to as a child in care.

17. Furthermore, the government has omitted to introduce a statutory presumption that children will remain looked after until at least the age of 18. When last in power, the Labour Party introduced statutory provisions making it harder for local authorities to cease looking after children before the age of 18, but this has not stopped the common

local authority practice of expecting children aged 16 and 17 to prepare for adult life by living alone with minimal adult support and guidance. Indeed, the regulation of care-less accommodation (supported accommodation for looked after children aged 16 and 17, where they receive no day-to-day care where they live) has significantly increased the neglect of teenagers in care.

18. **Recommendation: Establish a statutory presumption that children in care will remain in care until the age of 18. This would ensure sufficient support and guidance before transitioning to adulthood.**

Clause 10 – widening places where looked after children can be deprived of their liberty under the Children Act 1989

19. The November 2024 policy document *Keeping children safe, helping families thrive* stated the government *"will amend primary legislation to provide a statutory framework for [local authorities] seeking to place children in a new type of accommodation, where they may be deprived of their liberty, but where the accommodation is not explicitly designed according to the same design specification as current secure children's homes".* In addition, the strategy promised *"clear criteria for when children may need to be deprived of liberty and mandatory review points to ensure that no child is deprived of liberty for longer than is required to keep them safe".* This was in response to many hundreds of children being deprived of their liberty each year through the High Court's use of its inherent jurisdiction – a last resort backstop to protect individual children from significant harm when existing measures in legislation cannot come to their assistance.

20. As effective support for children and their families and the availability of safe and suitable homes for looked after children have contracted, increasingly, the High Court has been relied upon to make 'last resort' orders to deprive children of their liberty in ad hoc arrangements – including in caravans, rental properties and hotel rooms. Judges have been sounding the alarm for over 15 years that there are not enough specialist forms of accommodation for children with profound needs and in acute states of distress. The former Education Secretary, Gillian Keegan, was even directed in November 2022 to send a representative to explain the then government's position on the provision of secure accommodation. At the time the President of the Family Division observed that the stance taken by the Department of Education *"displayed a level of complacency bordering on cynicism".*

21. Clause 10 would amend section 25 of the Children Act 1989 to provide for the courts to be able to authorise the deprivation of a child's liberty in accommodation other than secure children's home (referred to as "relevant accommodation"). While steps to address the problem described above are welcome, it is unclear what this accommodation will look like. The only description of "relevant accommodation" provided in the Bill is that its purpose is "to provide care and treatment of children",

and that it "is capable of being used (in whole or part)" to deprive children of their liberty.

22. Currently only secure children's homes are used to deprive children of their liberty under section 25 of the Children Act 1989. Ofsted reports that, *"Around 50 children each day are waiting for a place [in a secure children's home] and around 10 are placed by English local authorities in Scottish secure units due to the lack of available places in England"*. In 2002, there were 29 secure children's homes in England and Wales; there are now 13. All except one are run as part of local authority children's services; the remainder is run by a charity. Secure children's homes are inspected at least twice a year.

23. In the absence of any public consultation or detailed published plans, the government's intentions may only become clear when it introduces secondary legislation. One key question is whether private companies will be allowed to operate relevant accommodation/places of confinement under the Children Act 1989. The vast majority (83%) of children's homes are run for profit. However, never before has child welfare legislation allowed profit to be made from locking up highly vulnerable children.

24. Allowing large numbers of providers to have parts of buildings operating as places of confinement is reminiscent of children's homes of the 1980s and before – where locked annexes and seclusion rooms were used as a form of control and punishment (see, for example, the 'Pindown' regime in Staffordshire children's homes in the 1980s).

25. We understand the imperative for government to act but amending primary legislation to allow private providers to run places of deprivation of liberty for highly vulnerable children in need would be a huge departure from long-established children's social care policy.

26. It is also unclear whether the new type of accommodation envisaged will, in reality, be so-called 'solo placements' where only one child lives in a property. Article 39 believes these arrangements are very rarely conducive to children's happy and healthy development. They carry additional safeguarding risks due to the isolation of the child and the absence of others who could potentially raise the alarm on mistreatment.

27. **Question for the Minister: Can the government provide further information on what it envisages 'relevant accommodation' will be defined as in secondary legislation?**

Clause 14 – new Secretary of State power to limit profit

28. Article 39 welcomes the power given to the Secretary of State in Clause 14 to limit the profit-making of children's homes providers and fostering agencies. However, we

deeply regret the omission of care-less accommodation providers (90% of those first registered by Ofsted are run for profit), since this is a burgeoning market undoubtedly encouraged by the last government's deliberately lax regulation.

Clause 19 – ill-treatment or wilful neglect of children aged 16 and 17

29. Through Clause 19, the government has elected to extend protections relating to the ill-treatment and wilful neglect by care workers in adult social care to children aged 16 and 17 living in certain settings, including children's homes, care-less accommodation (supported accommodation where children this age receive no day-to-day care), and child prisons. On initial analysis, this appears to be the further, deliberate 'adultification' of teenagers.

30. **Recommendation: The Bill should instead amend section 1 of the Children and Young Persons Act 1933, the offence of cruelty to children under the age of 16. This would provide significantly greater protection for 16 and 17 year-olds, as well as keeping them within the frame of child protection.**

1860 'reasonable chastisement' defence

31. Although not promised in its November 2024 policy document *Keeping children safe, helping families thrive*, it is astonishing that a Bill about child protection does not repeal the 'reasonable chastisement' defence available to parents and others who have been arrested and charged with the assault of a child.

32. The common law 'reasonable chastisement' defence arises from a criminal case from the Victorian era (1860), *R v Hopley*, where a headteacher was found guilty of the manslaughter of a 13 year-old child with learning difficulties. The judge instructed the jury that if it considered the headteacher, who had beat the child with a stick for more than two hours, had gone beyond moderate and reasonable physical punishment it should find him guilty. Chief Justice Cockburn said:

    "By the law of England, a parent or a schoolmaster (who for this purpose represents the parent and has the parental authority delegated to him), may for the purpose of correcting what is evil in the child inflict moderate and reasonable corporal punishment, always, however, with this condition, that it is moderate and reasonable."

33. As respect for children's physical and mental integrity has grown, the defence has been removed in a variety of children's settings – state schools (1986), children's homes (1990), independent schools (1998), fostering (2002), early years (2003) – but it remains available for parents charged with the assault of a child. It has also not been removed from part-time educational settings (including those operated by religious organisations), children's health settings or supported accommodation for looked after children aged 16 and 17. The idea that it can be legitimate to inflict physical violence to correct "what is evil in the child" is anathema to children having equal dignity and worth to adults, as outlined in Article 1 of the Universal Declaration of Human Rights

1948. Ever since the UK ratified the UNCRC in 1991, the Committee on the Rights of the Child has consistently urged law reform, calling in 2023 on the government to *"repeal the legal defence of "reasonable punishment" in England and Northern Ireland."*

34. In December 2024, 10 year-old Sara Sharif's father and stepmother were sentenced for her murder. When Sara's father rang Surrey Police, in August 2023, to inform them he had killed his daughter, his words echoed those of the judge in the 1860 Hopley trial. Sara's father told police he had "legally punished" Sara before she died, and "I beat her up ... I beat her up too much". It was later revealed that he had signed agreements with social workers in 2013 and 2015 not to physically chastise Sara. The truth is the law was on the father's side – because it reinforces the view that children are the property of their parents and can be hit by them, *so long as they don't go too far.* Sentencing Sara's father, Mr Justice Cavanagh said:

    "Sara was a brave, feisty and spirited child. She was not submissive, as you wanted her to be. She stood up to you. You considered that her behaviour entitled you to chastise her physically, and I have no doubt that your ego and sense of self-importance were boosted by the power that you wielded over her and the rest of the family…Sara never did anything that might conceivably have justified any part of the treatment that she endured."

35. It is not unusual for governments to table amendments to Public Bills shortly after their introduction, to remedy drafting oversights. The removal of this disreputable defence that allows parents and others to imagine there are forms of physical violence which are legitimate if the victim is a child must be an immediate priority. Nearly 70 states plus the nations of Wales and Scotland have given children the same legal protection from assault as adults. We must be next.

36. **Recommendation: The Bill should introduce an amendment removing the 'reasonable chastisement' defence for physically assaulting a child.**

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