



## BRIEFING PAPER

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# Children and Social Work Bill [HL] 99: analysis for Commons 2nd Reading

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## Summary

### Support for looked after and previously looked after children (Clauses 1 to 3)

Clause 1 would introduce seven “corporate parenting principles” that local authorities “must have regard to” in respect of currently looked after children (i.e. children subject to a care order or in local authority accommodation for a continuous period of more than 24 hours), as well as certain former looked after children. Clause 2 would require a local authority to publish its “local offer” setting out the statutory services available to care leavers, and Clause 3 would allow all former relevant children aged under 25 years, as opposed to those in education or training as is currently the case, to continuing support from a personal adviser on request. During the Lords’ consideration of the Bill, it was agreed that the matter of children’s mental health should be specifically stated in the corporate parenting principles. In respect of the local offer, the Government accepted it should include information on relationships.

### Education of looked after and previously looked after children (Clauses 4 to 7)

Local authorities and maintained schools in England currently have a range of statutory duties in relation to supporting the education of looked after children. Clauses 4 to 7 of the Bill would extend many of these duties to previously looked after children who have left care through adoption, Special Guardianship Order, or Child Arrangements Order. They would also place academy schools under similar statutory duties to maintained schools. In general, these clauses have been welcomed and were only subject to minor amendment during the Bill’s House of Lords stages, although the Government gave a number of undertakings. It committed, for example, to bringing forward amendments during the Commons Stages of the Bill to ensure that children adopted outside England were covered by the measures.

### Adoption (Clauses 8 and 9)

Clause 8 extends the “permanence provisions” in relation to a care plan for a child in care to include so that when a court is making decisions about the long term placement of children it includes an assessment of the child’s current and future needs, including any current and future needs resulting from the impact of harm that a child has suffered (or are likely to have suffered). Clause 9 would amend the existing adoption provisions so that any relationship with a prospective adopter is among the matters to which a court or adoption agency must have regard to.

### Child safeguarding, and proper performance (Clauses 11 to 30)

Clause 11 extends the Secretary of State’s existing power to secure “proper performance” to combined authorities.

Clauses 12 to 15 would establish a new national Child Safeguarding Practice Review Panel, whose chair and members would be appointed by the Secretary of State. The Panel would review serious child safeguarding cases in England which “raise issues that are complex or of national importance”.

Clauses 16 to 23 would replace the existing Local Safeguarding Children Boards with new local arrangements for safeguarding and promoting the welfare of children, a central feature of which will be there are only three safeguarding partners – local authority, and

the NHS Clinical Commissioning Groups (CCGs) and police forces falling within that local authority area – although they could choose to invite other agencies. They will be responsible for undertaking local child safeguarding practice reviews in respect of serious cases which raise issues of importance to the local area. During Lords consideration, the Government agreed that the focus of such reviews should be on what improvements can be made, rather than “lessons learned” which was considered to be too broad.

Clauses 24 to 28 would establish child death review panels, composed of a local authority and the CCGs within that local authority area, and would review the death of a child in the local authority (and may do so even if the child was not normally resident there).

### **Pre-employment protection of whistleblowers (Clause 31)**

At present, whistleblower law protects workers from being subjected to detriment for making public interest disclosures, but does not prohibit discrimination against job applicants who are known to have blown the whistle at a previous employer. Clause 31 of the Bill would provide a power for the Secretary of State to extend whistleblower protections to persons who apply to work in “children’s social care positions”, as defined in the Bill. A similar power currently exists in relation to workers in the health service, enacted following calls to strengthen whistleblowing protections in the wake of the events at Mid-Staffordshire NHS Foundation Trust.

### **Regulation of Social Workers (Clauses 33 to 57)**

#### **Social work regulation in England**

Social work regulation is a devolved matter. Social workers in England are currently regulated alongside 15 other health and care professions by the Health and Care Professions Council (HCPC). HCPC’s role is to protect the public by ensuring that only qualified and competent practitioners are allowed to practice as social workers. The work of HCPC is overseen by the Professional Standards Authority for Health and Social Care (PSA).

#### **Proposal for a new social work regulator**

On 14 January 2016, the Government announced its intention to establish a social work specific regulatory body to improve standards in the social work profession, as part of wider social care reform. Provisions were subsequently included in Part 2 of the *Children and Social Work Bill [HL] 2016-17* to enable the establishment of a new social work regulatory regime.

On 27 June 2016, following Second Reading, the Department for Education (DfE) and the Department of Health (DH) published a joint *Policy Statement on Regulating Social Workers*, outlining the Bill's provisions in greater detail.

#### **Concerns over Part 2 of the Bill as introduced in the House of Lords**

Some provisions of Part 2 of the Bill, as introduced in the House of Lords, proved to be controversial. Members of the Lords and stakeholders raised a number of concerns, including: whether regulatory change is needed at this time; the impact of further change on the profession; the Bill’s reliance on delegated legislation; the social work regulator’s independence from government; the distinction between regulation and improvement; the costs of setting up and running a new social work regulator; the lack of consultation with the social work sector; and social work policy fragmentation.

## **The Government's updated Policy Statement and amendments to the Bill at Report Stage**

In light of the concerns raised about Part 2, DfE and DH published a *Social Work Regulatory Reform – Update to Policy Statement* on 1 November 2016. The update accompanied a number of Government amendments to revise its initial proposal.

The main Government amendments, agreed at Report Stage, were to:

- place greater detail about the new social work regulator in primary legislation;
- establish the regulator as a separate, independent Non-Departmental Public Body overseen by the PSA;
- focus the regulator's role on professional regulation rather than professional development; and
- require the regulator to consult with the social work sector, and seek Ministerial approval, when setting professional, education and training standards.

The Government has also:

- set up an Advisory Group, consisting of key social work sector representatives, to work through the detail of the proposal; and
- committed to fund the regulator's set-up costs and to contribute up to £16 million towards the regulator's running costs over the rest of the 2015 Parliament.

## **Part 2 as introduced in the House of Commons**

Part 2 of the Bill, as presented to the House of Commons, differs significantly from the version initially presented to the House of Lords; more than 90 amendments were made.

Part 2 creates a new independent regulator of social workers in England called Social Work England. The overarching objective of the regulator in exercising its functions is the protection of the public. The regulator will be required to: keep a register of social workers in England; set social work professional, education and training standards; determine an individual social worker's fitness to practice; and cooperate with the other social work regulators in the UK.

The Bill enables the Secretary of State, by way of Regulations, to make certain provisions regarding the regulation of social work. Regulations under Part 2 are subject to consultation and the affirmative resolution procedure. The Bill also allows for the responsibility to approve courses for approved mental health professionals and best interest assessors to transfer to the new regulator.

# 1. Introduction of the Bill

## 1.1 Queen's Speech

On 18 May 2016, the Queen's Speech stated that "a Bill will be introduced to ensure that children can be adopted by new families without delay, improve the standard of social work and opportunities for young people in care in England".<sup>1</sup>

Background notes provided by the Department for Education (DfE) stated that:

The purpose of the Bill is to:

- Ensure that the state delivers on our collective responsibility to help children leaving care make a good start in adult life, through a new 'Care Leavers' Covenant' underpinned by a statutory duty requiring local authorities to publish the services and standards of treatment care leavers are entitled to.
- Tip the balance in favour of permanent adoption where that is the right thing for the child - helping to give children stability.
- Drive improvements in the social work profession, by introducing more demanding professional standards, and setting up a specialist regulator for the profession.<sup>2</sup>

## 1.2 The Government's vision and strategy for children's social care

In January 2016, the DfE published *Children's social care reform – A vision for change*, which said:

We want every child in the country, whatever their background, whatever their age, whatever their ethnicity or gender, to have the opportunity to fulfil their potential. Children's social care services have an essential role to play – whether by keeping children safe from harm, finding the best possible care when children cannot live at home, or creating the conditions that enable children to thrive and achieve. To make that happen, it is essential that everybody working within children's social care has the knowledge and skills to do their jobs well, and the organisational leadership and culture to support and challenge them to keep improving.<sup>3</sup>

The document stated that "reforms will be structured around three areas", namely:

- First, people and leadership – bringing the best people into the profession, and giving them the right knowledge and skills for the incredibly challenging but hugely rewarding work we expect them to do, and developing leaders equipped to nurture practice excellence.

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<sup>1</sup> [HL Deb 18 May 2016 c2](#)

<sup>2</sup> GOV.UK, [Queen's Speech 2016: background briefing notes](#), Policy paper, 18 May 2016

<sup>3</sup> Department for Education, [Children's social care reform – A vision for change](#), January 2016, p3



- Second, practice and systems – creating the right environment for excellent practice and innovation to flourish.
- Third, governance and accountability – making sure that what we are doing is working, using data to show us strengths and weaknesses in the system, and developing innovative new organisational models with the potential to radically improve services.<sup>4</sup>

In July 2016, after Second Reading in the Lords, the DfE published *Putting Children First – Delivering our vision for excellent children’s social care*.

The strategy document stated that it “builds on the paper ‘Adoption: a vision for change’ which set out the government’s vision for a reformed adoption system by 2020, and also responds to the important recent reviews by Sir Martin Narey and Alan Wood CBE, on residential care and multi-agency arrangements for safeguarding children respectively”. The Government’s ambition “is that all vulnerable children, no matter where they live, receive the same high quality of care and support, and the best outcome for every child is at the heart of every decision made”.<sup>5</sup>

### 1.3 Passage of the Bill to date

The key dates in the passage of the Bill to date are:

- House of Lords
  - First Reading: 19 May 2016;
  - Second Reading: 14 June 2016;
  - Committee Stage (in Grand Committee): 29 June and 4, 6, 11 and 13 July 2016;
  - Report Stage: 18 October and 8 November 2016
  - Third Reading: 23 November 2016
- House of Commons
  - First Reading: 24 November 2016
  - Second Reading: 5 November 2016

Copies of the Hansard records of the above are available online at:

<http://services.parliament.uk/bills/2016-17/childrenandsocialwork/stages.html>

There have been four versions of the Bill published to date; the current version is [Bill 99](#) which has accompanying [explanatory notes](#):

- HL Bill 1 – as introduced to the Lords
- HL Bill 57 – as amended in Grand Committee
- HL Bill 69 – as amended on Report

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<sup>4</sup> Department for Education, [Children’s social care reform – A vision for change](#), January 2016, p4

<sup>5</sup> Department for Education, [Putting children first – Delivering our vision for excellent children’s social care](#), July 2016, p12, paras 12 and 14

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- Bill 99 – as introduced to the Commons

A helpful list of amendments moved at Committee, Report and Third Reading Stages can be found at:

<http://lordsamendments.parliament.uk/?Session=2016-2017&Id=1774>

The key documents relating to the Bill can be found at the services.parliament.uk website at:

<http://services.parliament.uk/bills/2016-17/childrenandsocialwork.html>

## 2. Children in care

### 2.1 Corporate parenting

#### Explanation of Clause 1 of Bill 99

Clause 1 “sets out a framework of corporate parenting principles that overlay these existing responsibilities of local authorities towards looked after children and those leaving care to make clear what it means for the authority as a whole to act as a good parent”.

Specifically, a local authority “must ... have regard to” the seven corporate parenting principles, namely:

- (a) to act in the best interests, and promote the physical and mental health and well-being, of those children and young people;
- (b) to encourage those children and young people to express their views, wishes and feelings;
- (c) to take into account the views, wishes and feelings of those children and young people;
- (d) to help those children and young people gain access to, and make the best use of, services provided by the local authority and its relevant partners;
- (e) to promote high aspirations, and seek to secure the best outcomes, for those children and young people;
- (f) for those children and young people to be safe, and for stability in their home lives, relationships and education or work;
- (g) to prepare those children and young people for adulthood and independent living.

The local authority “must have regard to whenever they exercise a function in relation to looked after children, relevant children and former relevant children (otherwise known as looked after children and care leavers)”. In addition, “the principles are applicable to all local authorities in England, whether or not they are (or were) the local authority responsible for looking after the child or responsible for the care leaver”.

In addition, a local authority in England must have regard to any guidance given by the Secretary of State as to the performance of the duty.<sup>6</sup>

#### What is a “looked after child”

A child is a “looked after child” i.e. looked after by a local authority if either:

- they are subject to a care order (including an interim care order);  
or

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<sup>6</sup> [Bill 99-EN](#), pp5 and 13, paras 3 and 39–48

- they are provided with accommodation by a local authority for a continuous period of 24 hours or more.

## Numbers and characteristics of children in care

DfE statistics<sup>7</sup> show that in the year ending 31 March 2016, a total of 70,440 children were looked after by local authorities in England, a rate of 60 per 10,000 children under 18 years. The absolute number of children looked after has increased by 17% over the past decade (60,300 in 2006). Indeed, the number has increased steadily over the past seven years and it is now higher than at any point since 1985.

Children aged between 10 and 15 years represent the majority of the looked after population (39%), while children under one year old are in a minority (5% of the looked after population). The looked after population includes more boys than girls (56% compared with 44%). These age- and gender-related distributions have remained relatively constant over the past decade.

The majority of the looked after population is *White* (77%), with *Mixed* groups and *Black* or *Black British* making up approximately 9% and 7% respectively. These minority ethnic groups appear to be overrepresented in the looked after population (around 5% of the child population of Great Britain is from *Black* or *Black British* and *Mixed* groups).<sup>8</sup>

## The concept of corporate parenting

The then Children, Schools and Families Select Committee, in its April 2009 report, *Looked-after Children* described the concept of corporate parenting:

The concept of "corporate parenting" was introduced with the launch of the [Department of Health's] *Quality Protects* programme in 1998. The principle is that the local authority is the corporate parent of children in care, and thus has a legal and moral duty to provide the kind of support that any good parents would provide for their own children. This includes enhancing children's quality of life as well as simply keeping them safe.<sup>9</sup>

In its 2006 White Paper, the then Department for Education and Skills – which had assumed responsibility for children in care from the Department of Health – noted the challenges faced by children in care:

Entering care represents a significant change in a child's life. The State takes on an immense responsibility for these children by agreeing to undertake the parental role on a day to day basis. That means that all those working for the State at a local level – every councillor, every Director of Children's Services, every social worker or teacher – should demand no less for each child in care than they would for their own children.

What children need more than anything is a stable, confident parent able and willing to be vocal on their behalf. This is the role

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<sup>7</sup> Department for Education, [Children Looked After in England including adoption statistics](#)

<sup>8</sup> Office for National Statistics, 2011 Census data

<sup>9</sup> Children, Schools and Families Committee, [Looked-after Children](#), 2007-08 HC 111, 20 April 2009, p73, para 145

of their social worker but children have told us that this does not always happen well enough in practice.<sup>10</sup>

The Children, Schools and Families Select Committee observed that “the premise of the *Care Matters* programme was that the corporate parent’s aspirations for children in care should be exactly the same as any parent’s aspirations for their own child”.<sup>11</sup>

However, the Committee noted that “it is not clear at present what the consequences will be for a corporate parent that fails to keep its promises to children, nor what action a child will be able to take if those promises are broken”.<sup>12</sup>

### The current legislation

Section 22 of the *Children Act 1989* as amended sets out the “general duty of [a] local authority in relation to children looked after by them”, specifically that it:

shall be the duty of a local authority looking after any child—

- a) to safeguard and promote his welfare; and
- b) to make such use of services available for children cared for by their own parents as appears to the authority reasonable in his case.

The duty of a local authority under subsection ... (a) to safeguard and promote the welfare of a child looked after by them includes in particular a duty to promote the child’s educational achievement.

The legal text *Children Law and Practice* (Hershman and McFarlane) sets out all of the current statutory duties on English local authorities in respect of a looked after child, including those outlined above:

- a) to safeguard and promote the children’s welfare;
- b) to make such use of services available for children cared for by their own parents as appears to the authority reasonable in the case;
- c) to maintain the children in other respects apart from the provision of accommodation;
- d) to ascertain the wishes and feelings of the children, and the wishes and feelings of their parents, those persons with parental responsibility, and any other person whose wishes and feelings the authority considers to be relevant; and
- e) to give consideration to those wishes and feelings;
- f) to advise, assist and befriend the children with a view to promoting their welfare when they cease to be provided with accommodation;

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<sup>10</sup> Department for Education and Skills, [Care Matters: Transforming the Lives of Children and Young People in Care](#), Cm 6932, October 2006, pp31–32, paras 3.1–3.2

<sup>11</sup> Children, Schools and Families Committee, [Looked-after Children](#), 2007-08 HC 111, 20 April 2009, p25, para 23

<sup>12</sup> Children, Schools and Families Committee, [Looked-after Children](#), 2007-08 HC 111, 20 April 2009, p69, para 137

- g) to consider whether to apply to discharge the care order;
- h) to promote contact between the children and their parents;
- i) to appoint a visitor (in certain circumstances);
- j) to establish and maintain a written case record and register with respect to each child;
- k) to ensure that the children are medically examined in accordance with regulations;
- l) to provide a complaints procedure;
- m) to review the case of each child being looked after, in accordance with the regulations and implement the 'care plan';
- n) to carry out reviews in accordance with regulations;
- o) if a child dies while being looked after, to notify the Secretary of State, the parents, and those with parental responsibility;
- p) to provide information as to where the children are accommodated;
- q) where the child is in a foster placement, to notify specified agencies of various events relating to the child.<sup>13 14</sup>

## The proposals in the Bill as first presented to the Lords

Clause 1 of the Bill as presented to the Lords for Second Reading proposed the introduction of seven "corporate parenting principles":

- a) to act in the best interests, and promote the health and well-being, of those children and young people;
- b) to encourage those children and young people to express their views, wishes and feelings;
- c) to take into account the views, wishes and feelings of those children and young people;
- d) to help those children and young people gain access to, and make the best use of, services provided by the local authority and its relevant partners;
- e) to promote high aspirations, and seek to secure the best outcomes, for those children and young people;
- f) for those children and young people to be safe, and for stability in their home lives, relationships and education or work;
- g) to prepare those children and young people for adulthood and independent living.

The principles will apply to:

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<sup>13</sup> Hershman and McFarlane, *Children Law and Practice*, para F763

<sup>14</sup> These duties do not apply if a local authority uses its power under section 22(6) of the *Children Act 1989* i.e. "If it appears to a local authority that it is necessary, for the purpose of protecting members of the public from serious injury, to exercise their powers with respect to a child whom they are looking after in a manner which may not be consistent with their duties under this section, they may do so".

- looked after children;
- “relevant children” – those aged 16 or 17 years who are not currently being looked after but had been looked after by a local authority for a period totalling at least 13 weeks which began after reaching 14 years and ended after they reached the age of 16;<sup>15</sup>
- “former relevant children” aged under 25 years – someone aged 18 or above, and either (a) has been a relevant child and would be one if he were under 18, or (b) immediately before he ceased to be looked after at age 18, was an eligible child.<sup>16</sup>

## Consideration by the House of Lords

### Second Reading

At Second Reading, the Parliamentary Under-Secretary of State at the DfE, Lord Nash, explained that:

Clause 1 will establish a set of principles that set out what it means for a local authority to act as a good “corporate parent”, and that applies to the whole local authority, including housing, health and well-being, and other local amenities, not just children’s services. The principles will not just be transformative for care leavers but also apply to any children who are looked after by the state and who need someone to champion their interests in the same way as birth parents do, because these children deserve the same opportunities as any other.

The principles do not place any new duties on local authorities but provide a clear definition of expectations about how the local authority should fulfil this role based on what any good parent would do for their own children. It articulates for the first time, in one place, what support these children can expect. At the same time as introducing the principles in the Bill, the Government will also promote a care leaver covenant in which we will encourage other local agencies and organisations to come together and pledge their support for care leavers.<sup>17</sup>

For the Opposition, Lord Watson of Invergowrie said that “the introduction of detailed principles of corporate parenting provides much-needed recognition of the need to reconsider the support offered to the most vulnerable children in our society”, although he added that the principles “should, we believe, be a duty, as happens in Scotland,<sup>18</sup> and they should cover all relevant public services.<sup>19</sup>

While noting the “wholly admirable statement of principles set out in Clause 1”, Baroness Pinnock for the Liberal Democrats said “it is unfortunate that Clause 1 fails to include reference to what is generally described as ‘the voice of the child’”, arguing that “a strong role for the

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<sup>15</sup> *Children Act 1989* as amended, section 23A and Schedule 2, paragraph 19B; *Care Planning, Placement and Case Review (England) Regulations 2010* (SI 2010/959), regulation 40

<sup>16</sup> Department for Education, [The Children Act 1989 guidance and regulations – Volume 3: planning transition to adulthood for care leavers](#), January 2015, p12; see *Children Act 1989* as amended, section 23C

<sup>17</sup> [HL Deb 14 June 2016 c1113](#)

<sup>18</sup> See section 58 of the *Children and Young People (Scotland) Act 2014*.

<sup>19</sup> [HL Deb 14 June 2016 c1118 and c1119](#)

Children’s Commissioner nationally, and a named corporate parent locally, could fulfil this”.<sup>20</sup>

### **Committee Stage**

The clause was not amended during Committee stage, although a number of amendments were tabled.

A number of amendments were tabled that would have required other providers, such as NHS clinical commissioning groups (CCGs), to also adopt the corporate parenting principles, while amendment 7 would have “strengthen[ed] the way in which local authorities would be required to apply the principles” by requiring local authorities to “ensure that they meet” the principles (rather than “have regard to” them).

For the Government, Lord Nash explained that “in designing the seven principles, the Government have set out the key decisions that young people tell us are of fundamental importance to being a good corporate parent”.

On the point that the principles would not be a duty, Lord Nash said “there is already a comprehensive set of duties on local authorities required by the *Children Act 1989* in regard to looked-after children and care leavers. This is further supported by statutory guidance. Interagency co-operation is also vital for providing coherent services for looked-after children and care leavers”. He continued:

I recognise why noble Lords may wonder whether the phrasing of the legislation—to “have regard to” the principles—is sufficiently strong. They will ask whether instead local authorities should have to ensure that they meet the need to carry out those principles ... In establishing the seven principles, we seek to articulate the kinds of things that a local authority must have in its mind and culture when it exercises its functions in relation to this vulnerable group. Our intention is to provide a clear and helpful point of reference, and to drive a shift in approach where necessary.

Given that the principles are about how local authorities carry out their existing functions in relation to looked-after children and care leavers, the principles should not, and were never intended to, be about limiting the discretion of a local authority in how they are applied. The corporate parenting principles build on the 1989 Act, and the wording of the clause means that local authorities must have regard to the principles—they cannot disregard them—but they have flexibility in terms of how they carry them out. The guidance will inform how that works in principle and in practice.

As I said when I began my response to these amendments, the Government seek to embed a strong corporate parenting culture in every local authority. We need to strike a balance between a top-down and a grass-roots approach. In other words, particularly if we want to avoid unintended consequences and a tick-box approach to parenting by the state, the legislation needs to be sensible and proportionate. We want to give local authorities the freedom to meet the needs of looked-after children and care leavers in the way that works best for them. For example, it might

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<sup>20</sup> [HL Deb 14 June 2016 c1122](#)



be that the local authority decides to waive council tax for care leavers under 22 or under 25 as they do in North Somerset.

In terms of how the principles would operate in practice, the Minister said that the Government “do not want to create a complicated and confusing tick-box approach, burdening local authorities with a whole raft of extra duties”. Rather, he said that it was the intention of the Minister for Vulnerable Children and Families, Edward Timpson, to “drive a culture of good corporate parenting across the whole local authority and not just through the children’s services team”. Lord Nash explained that “we cannot change culture through legislation alone, but we can legislate to influence how people talk about their responsibilities and how they discharge those responsibilities in relation to looked-after children and care leavers”.

On the point concerning extending the principles to other organisations, Lord Nash said: “under Section 10 of the *Children Act 2004*, local authorities must make arrangements to promote co-operation between themselves and partner agencies, including health agencies”.<sup>21</sup>

### **Report Stage**

The clause was amended during Report Stage.

The Government tabled an amendment to the principle that local authorities “must ... have regard to the need to act in the best interests, and promote the health and well-being, of those children and young people”. It also clarified that health meant “physical and mental health”.

The importance of the mental health of those who were in or had been in care had been debated extensively during the Committee stage. Lord Nash said that the Government had since reflected and decided to table the amendment to “put beyond doubt that promoting the health and well-being of looked-after children and care leavers will mean promoting their mental and physical health”.<sup>22</sup>

The amendment was welcomed by Members and agreed without division.

Two amendments were tabled to add an additional principle to the seven, although they were not agreed.

Amendment 2 proposed a new principle “to nurture, protect and maintain relationships with families and carers with whom they have lived previously and with whom they wish to remain in contact”. Lord Nash noted that “paragraph 15 of Schedule 2 to the *Children Act 1989* ... requires local authorities to promote contact with parents, relatives and those connected with the child, provided it is consistent with the child’s welfare”, and that the legislation is support by guidance.

Amendment 3 would have added a further principle in regard to promoting access to legal advice and representation. The Minister noted that “Local authorities have a duty to provide assistance for

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<sup>21</sup> [GC Deb 29 June 2016 cc36–39](#)

<sup>22</sup> [HL Deb 18 October 2016 c2231](#)

advocacy services for all looked-after children, children in need and children in care, and this includes making them aware of this provision”, but added that “we need to work directly with local authorities to improve good practice and raise awareness”.<sup>23</sup>

Amendments 6 and 7 sought to engage a local authority’s partner with the corporate parenting principles, but Lord Nash said that “Legal responsibility and accountability for looked-after children and care leavers rests with local authorities”, and repeated the argument from Committee Stage that “section 10 of the *Children Act 2004* already places a robust and clear statutory duty on local authorities to, ‘make arrangements to promote co-operation’. This, he said, meant that “these amendments simply duplicate what is already legally required or necessary in practice to meet existing requirements regarding looked-after children and care leavers”.<sup>24</sup>

Three new clauses were proposed:

- Baroness Tyler of Enfield proposed an amendment to section 22 of the *Children Act 1989* to introduce a duty to promote physical and mental health and emotional well-being.
- Lord Mackay of Clashfern’s proposed new clause would have required a member of local authority care staff to be responsible for the well-being of a child in residential care;
- Lord Watson of Invergowrie proposed a new duty on local authorities to provide suitable accommodation for former relevant children up to the age of 21 years.

The Minister agreed to discuss the first two proposed new clauses before Third Reading, and in regard to the new duty on accommodation noted that “local authorities are already responsible for providing suitable accommodation to all care leavers aged 16 to 17”, adding that the term “suitable” is defined in statutory guidance. He added that “when care leavers reach the age of 18, local authority care teams are responsible for helping them to access suitable accommodation”, and that “where care leavers do struggle to find and maintain accommodation, they have a priority need within the homelessness legislation until the age of 22, and they are also a priority group in statutory guidance on the allocation of social housing”.<sup>25</sup>

The three amendments were withdrawn.

### Third Reading

Baroness Tyler tabled the proposed amendment regarding the duty to assess and promote physical and mental health and emotional well-being at Third Reading stage, albeit in revised form from Committee Stage.

She noted that in the intervening period, she had met with the Minister “to discuss my concerns about why the current approach to identifying and responding to the emotional and mental health needs of children in care is simply not working—a point confirmed in the Care Quality

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<sup>23</sup> [HL Deb 18 October 2016 c2255](#)

<sup>24</sup> [HL Deb 18 October 2016 c2259](#)

<sup>25</sup> [HL Deb 18 October 2016 c2266](#)

Commission's report *Not Seen, Not Heard* earlier this year". While the meeting was "extremely helpful and constructive", and that an expert advisory group set up by Ministers to develop care pathways for children with mental health problems is due to report in October 2017, Baroness Tyler said her new amendment was less prescriptive in nature and "would ensure that the emotional and mental health needs of children in care are identified early and that they and those caring for them can receive the support required to meet their needs and prevent the current unacceptably high rate of escalation to mental health conditions, which can affect children long into adulthood".<sup>26</sup>

Lord Nash said that the Government's "considered view ... is that we should not pre-empt the findings of the expert group. We need to let it develop its recommendations to be confident that we are making changes that will have the effect that I believe that we all ... want to see". In the mean-time, the Minister noted that a number of steps were being taken, including new training models for talking therapies, a new model of integrated mental health care in secure children's homes and pilot schemes to test new approaches to mental health assessments for looked after children.

The Minister added that:

The amendment seeks to bolster what is already in Section 22 of the Children Act 1989, which places a general duty on local authorities to safeguard and promote the welfare of looked-after children. It is implicit that this means promoting their mental health and emotional well-being. Care planning regulations spell out what that means in more detail: undertaking health assessments that explicitly address mental and emotional health as well as physical health. I am very happy to revisit the relevant guidance and regulations to consider whether the terminology might benefit from being more explicit on the importance of mental health.<sup>27</sup>

The amendment was withdrawn.

## Commentary on the proposal

The Alliance for Children in Care and Care Leavers, whose members include Barnardo's, the Care Leavers' Association and the Family Rights Group among others, said that it "welcomes the introduction of statutory corporate parenting responsibilities and the Bill's focus on the emotional wellbeing of children in care, but we believe these provisions need to be strengthened", and listed a number of areas of concern.<sup>28</sup>

## 2.2 Publication of the local offer

### Explanation of Clause 2 of Bill 99

Clause 2 of the Bill "would also require local authorities to publish their offer of support to young people leaving their care, and remove the requirement for certain care leavers to be in education and training

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<sup>26</sup> [HL Deb 23 November 2016 cc1941–1943](#)

<sup>27</sup> [HL Deb 23 November 2016 cc1946–1947](#)

<sup>28</sup> Alliance for Children in Care and Care Leavers, *Second Reading Briefing – Children and Social Work Bill (House of Lords)*, pp1–2

before they are entitled to a personal adviser and other help from the local authority”.

It requires local authorities in England to “publish information about the services which it offers to care leavers as a result of its duties under the Children Act 1989 and other services it offers to everyone, which may assist care leavers in or in preparing for adulthood and independent living”, namely “health and well-being; education and training; employment; accommodation; participation in society; and relationships”, as well as “services offered by others which the local authority would have had the power to offer itself”.

A local authority must update its local offer “from time to time, as appropriate”, but before publication (either for the first time or an update) it “must consult relevant persons [care leavers and their representatives] about which of the services offered by the local authority may assist care leavers in, or in preparing for, adulthood and independent living”.<sup>29</sup>

## Background to the proposal

As the DfE noted in *Keep On Caring – Supporting Young People from Care to Independence* published in July 2016:

One of the most common concerns raised by care leavers is that they are not aware of either their legal entitlements, or the wider support that is available to them locally. Our second legislative change, therefore, will be to place a requirement on local authorities to consult on, and then publish a local offer for care leavers. This will complement the local offer already in place covering the education, health and social care services available for children and young people who have Special Educational Needs or are disabled.

The DfE noted that “many local authorities already have forums that allow care leavers to feedback views on their leaving care support; and to find out more about what support is available to them. And many authorities also consult their care leavers about what additional support they would find helpful”. Therefore, the proposed legislation would seek to “formalise that process where it currently happens and extend it to every local authority, so that every care leaver in the country is aware of the support that they can expect”.

In terms of what the publication of the local offer would mean in practice:

As well as setting out care leavers’ legal entitlements, including its policy on Staying Put, the local offer will describe the other non-statutory services that the local authority leaving care team provides specifically for care leavers, such as health drop-in sessions. It will also set out how relevant universal services could support care leavers’ transitions to adulthood, such as careers advice services for all young people. The requirement to publish the local offer will bring greater transparency and allow local

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<sup>29</sup> [Bill 99-EN](#), pp5 and 13–14, paras 3 and 49–53

authorities to learn about services that are being provided in other local areas.<sup>30</sup>

## Consideration by the House of Lords

### Second Reading

Lord Watson, for the Opposition, said that while the proposal was “welcome”, he noted that “local authorities need only publish this information. There is a clear need for the emphasis to shift from reactive to proactive”, adding that information should be given up to a year before a person is due to leave care.<sup>31</sup>

Baroness Hughes wanted to know about its effectiveness in regard to children and young people with a special educational needs or disability, as provided for in the *Children and Families Act 2014*.<sup>32</sup> In response, Lord Nash said that it was “early days” but that the Government was “optimistic about its impact”.<sup>33</sup>

In addition, Baroness Hughes noted that the Bill “removes the existing requirement in the *Children Act 1989* to publish more generally information on services for looked-after children and care leavers, and instead, proposes this new duty to consult on and publish a local offer for care leavers only”. She described this as a “retrograde step”.<sup>34</sup>

### Committee Stage

A number of amendments were debated – although none were agreed – including that:

- the local offer must be published in a “form which can be accessed and understood by care leavers with physical or mental disabilities”;
- extending the local offer to include relevant services from central Government;
- extending the list of services included in the local offer to also include financial education and relationships;
- local authorities should assess the services provided to care leavers;
- the publication of a national minimum standard setting out “the quality and extent of services which must be offered as a minimum by a local authority under its local offer for care leavers”;

Lord Nash said that what the Bill stated should be in the local offer “is a non-exclusive list; the local authority may include other matters as it sees fit”. He argued that “an additional requirement to assess the services required to meet the needs of care leavers would be overly prescriptive”.

The Minister added that the Government “want local authorities to aim much higher than a minimum standard when it comes to what they

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<sup>30</sup> Department for Education, [Keep On Caring – Supporting Young People from Care to Independence](#), July 2016, p29, paras 3.13–3.15

<sup>31</sup> [HL Deb 14 June 2016 c1119](#)

<sup>32</sup> [HL Deb 14 June 2016 c1129](#)

<sup>33</sup> [HL Deb 14 June 2016 c1208](#)

<sup>34</sup> [HL Deb 14 June 2016 c1119](#)

offer”, adding that its “intention in legislating for the local offer is to raise the bar for services provided to care leavers ... Ultimately, Ofsted will be the arbiters of how good a local offer is”.

### Report Stage

Lord Farmer (Conservative) tabled an amendment, subsequently withdrawn, to include “relationships” among the points included in the published local offer, contesting it “stipulates that information and services to help young people develop and maintain healthy and supportive relationships should be available alongside the other five areas”.<sup>35</sup> Lord Nash said that he “agree[d] that high-quality and consistently supportive relationships are critical to supporting care leavers into successful independent lives”.<sup>36</sup>

Lord Watson’s amendment concerned creating national minimum standards “setting out the quality and extent of services which must be offered as a minimum by a local authority under its local offer for care leavers”, arguing that it would avoid “the postcode lottery that we all understand and that applies in different ways in different settings ... [and] be no more than a minimum to be built on but it is necessary so as to have something on which to fall back”.<sup>37</sup>

Lord Nash, as he had at Committee Stage, spoke against the proposal, saying that it would “mean central government deciding what is best for care leavers in their local area, rather than the local authorities and care leavers themselves. A set of minimum standards could serve to limit innovation and creativity, rather than to drive the improvements that we all want to see”.<sup>38</sup>

### Third Reading

Lord Farmer’s Report Stage amendment concerning the inclusion of “relationships” in the local offer list was accepted by the Minister, who tabled the amendment at Third Reading and explained that, following concerns by Lords that services relating to relationships was not on the list, he:

agree[d] that strong and supportive relationships are critical to supporting care leavers to lead successful independent lives. I committed to consider in detail whether an amendment to the Bill would be the best way of securing the necessary progress in this area and, on reflection, we believe that it would. I have therefore tabled this amendment to add services relating to relationships to Clause 2. If local authorities believe that particular services may assist care leavers in or in preparing for adulthood and independent living, they will now have to publish information about these services as part of their local offer, alongside information about services relating to the other five areas stipulated in the clause.<sup>39</sup>

In addition, the Government tabled an amendment to remove subsections 8 and 9 from the Bill. The removal of subsection 8 addressed

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<sup>35</sup> [HL Deb 18 October 2016 c2268](#)

<sup>36</sup> [HL Deb 18 October 2016 c2271](#)

<sup>37</sup> [HL Deb 18 October 2016 c2264](#)

<sup>38</sup> [HL Deb 18 October 2016 c2266](#)

<sup>39</sup> [HL Deb 23 November 2016 cc1948](#)

the concerns raised by Baroness Hughes at Second Reading that the Bill would remove “the existing requirement in the *Children Act 1989* to publish more generally information on services for looked-after children and care leavers”.<sup>40</sup>

Subsection 9 would have amended the *Children and Families Act 2014* so that the local offer in that legislation would have been renamed the “SEN and disability local offer”.

## Commentary on the proposal

Children England provided the following commentary on the local offer proposal as presented in HL Bill 1:

The local offer obligation is very much weighted towards the local authority providing information rather than ensuring services are actually provided to meet the needs of care leavers. Whilst up to date information for care leavers is essential in empowering them to make the most of the support available, the services themselves must be designed and resourced according to the needs of young people leaving care in the area. There can surely be no parliamentarian, in either House or any party, who is unaware of the extent of cuts and pressure on community services of all kinds. It is precisely this level and range of local services and budgets upon which care leavers rely. A ‘local offer’ of services that are oversubscribed, shrinking, merging, closing or facing long waiting lists, is not improved in its ability to deliver vital support for care leavers simply by being published.

Whilst it’s good to see the breadth of essential services for care leavers included in the scope of the offer, not all are within the local authority’s power to assure, such as health, and some, such as housing, are increasingly difficult for a local authority to maintain direct influence over.<sup>41</sup>

The Alliance for Children in Care and Care Leavers noted that “Care leavers often tell us that they do not know which services they are entitled to or how to access them. The duty on local authorities to consult and provide a “local offer” is important, but it will not address the problem of service availability, which means that young people’s needs are not being met”, adding:

- The Government should consider introducing a duty on local authorities to assess the level of service provision sufficient to meet the needs of local care leavers.
- The Alliance supports the guiding principle in the Scottish Care Leavers’ Covenant: “Corporate parents will assume all care leavers are entitled to services, support and opportunities, up to their 26th birthday”.<sup>42</sup>

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<sup>40</sup> [HL Deb 14 June 2016 c1119](#)

<sup>41</sup> Children England, [Children and Social Work Bill 2016 Second Reading briefing by Children England](#), p2

<sup>42</sup> Alliance for Children in Care and Care Leavers, [Second Reading Briefing – Children and Social Work Bill \(House of Lords\)](#), pp3–4



## 2.3 Continuing support for all care leavers up to 25 years of age

### Explanation of Clause 3 of Bill 99

Clause 3 would “remove the requirement for certain care leavers to be in education and training before they are entitled to a personal adviser and other help from the local authority”.<sup>43</sup> At present, only former relevant children aged 21 to 25 years in education or training can receive advice and support from a local authority; Clause 3 will remove the requirement to be in education or training.

The duties are:

- providing them with a personal adviser until the age of 25, or earlier if they no longer want one;
- carrying out an assessment of the young person’s needs to determine whether services offered by that authority may help to meet their needs and, if this is the case, what advice and support it would be appropriate for the responsible local authority to provide in order to help the young person obtain those services – the local authority must provide “the former relevant child with any advice and support which the assessment identified as appropriate”;
- prepare a pathway plan for them i.e. “a plan setting out the advice and support that the local authority intend to provide”;

Also, “a local authority must offer to provide a former relevant child with advice and support if they are not already receiving it, as soon as possible after they reach the age of 21, and at least once every 12 months thereafter”.

### What is a personal adviser?

For young people who have left care, they are currently entitled to continuing support from a personal adviser. Regulation 44 of the *Care Planning, Placement and Case Review (England) Regulations 2010*<sup>44</sup> as amended, specifies the role of the personal adviser. The personal adviser must:

- provide the young person with advice and support (this will include direct practical help to prepare them for the time when they move or cease to be looked after and also emotional support);
- participate in reviews of the pathway plan which for an eligible child will include the care plan;
- liaise with the responsible authority about the provision of services [in the implementation of the pathway plan] (this function may be carried out by the personal adviser working as a member of a social work or a specialist leaving care team; it will also involve liaising and negotiating with the full range of services that make up the local authority’s services, e.g. education and housing services);

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<sup>43</sup> [Bill 99-EN](#), pp5 and 14–15, paras 3 and 54–62

<sup>44</sup> SI 2010/959



- co-ordinate the provision of services, ensuring that these are responsive to the young person's needs and [take reasonable steps] that s/he is able to access and make constructive use of them;
- remain informed about the young person's progress and keep in touch with him/her – visiting at no less than the statutory intervals; and
- maintain a record of their involvement with the young person, monitoring the effectiveness of services in preparing the young person for a time when s/he will move to greater independence or when s/he ceases to be looked after.<sup>45 46</sup>

## The support currently available for young people who had been in care

The DfE's *Keep On Caring – Supporting Young People from Care to Independence* summarises how support for care leavers had evolved, including access to personal advisers:

Before the Leaving Care Act (2000), there was no statutory framework in place for care leavers, with each local authority determining what level of support it provided. With no nationally-set expectation about what was an adequate level of support, many care leavers received only minimal assistance. The 2000 Act introduced, for the first time, requirements on local authorities to: assess the needs of the young person once they left care; appoint a Personal Adviser for them; and develop a pathway plan. This support was available to care leavers up to age 18, or to age 21 if the young person was in education.

In 2008, the Children and Young Persons Act introduced provisions that required local authorities to provide assistance to care leavers in education (including a £2,000 bursary for those in higher education); and extended support from a Personal Adviser to age 21 for all care leavers; and to 25 if they remained in education.<sup>47 48</sup>

The DfE noted that “other care leavers, including those who are (NEET) [not in education, employment or training] are not currently entitled to continuing support. In recognition of the extra vulnerability of those who are NEET and the fact that many young people in the wider population continue to get support from their parents until their mid-twenties, we are extending support for all care leavers to age 25. We will provide additional funding for local authorities to implement this new duty”.<sup>49</sup>

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<sup>45</sup> Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, p128, para 5.18

<sup>46</sup> Information in square parenthesis is further information quoted from SI 2010/959 to provide clarification.

<sup>47</sup> Department for Education, [Keep On Caring – Supporting Young People from Care to Independence](#), July 2016, p9, paras 1.1–1.2

<sup>48</sup> In addition, the *Children & Families Act 2014* introduced the ‘Staying Put’ duty, which “requires local authorities to support young people to remain with their former foster carers to age 21 where both the young person and carer want the arrangement to continue”. (Department for Education, [Keep On Caring – Supporting Young People from Care to Independence](#), July 2016, p9, paras 1.3)

<sup>49</sup> Department for Education, [Keep On Caring – Supporting Young People from Care to Independence](#), July 2016, p30, para 3.17

## Consideration by the House of Lords

### Second Reading

Currently, support from local authorities applies until the age of 25 years if a care leaver is in education or training, but otherwise only to the age of 21 years. The Minister Lord Nash, said that this “seems the wrong way round, because those who have left education and training often live in less stable arrangements or do not have the same support networks to rely on”.

He said that “the Bill will extend the personal adviser service to any care leaver who requests it up to the age of 25” and that the Government would “also be reviewing the quality and remit of personal advisers so that we can make sure that the support they offer and the relationships they build are of a consistently high standard”.<sup>50</sup> For the Opposition, Lord Watson, described it as a “step forward”.<sup>51</sup>

### Committee Stage

A number of amendments were tabled to provide that all care leavers were assigned a personal adviser, whether requested or not. The Minister contended that “mandating a personal adviser for every care leaver, regardless of their wishes, and a requirement to provide such services would be disproportionate” and that, to do so, “raises several obvious practical issues”. It could also create “a real risk that that would divert support from care-leaving teams away from those who really need it”.

The Minister provided this assurance on the availability of personal advisers:

We want to make sure that all those who want the support of a personal adviser can access it.

There are two important issues here. The first is whether and how care leavers are made aware of the offer of support from a personal adviser. I suggest that the obvious place for that is the local offer. The second is whether a care leaver who has lost contact with their personal adviser should be able to resume this if and when they feel the need to do so at a later date ... I can certainly confirm that that would be possible through the existing legislation and Clause 3 for care leavers up to the age of 25. The guidance we are producing will encourage local authorities to carry out this new entitlement clearly, proactively and positively so that care leavers are encouraged to take it up.<sup>52</sup>

Lords Wills tabled amendments that would have replaced the phrase “former relevant child” with “care leaver” throughout Clause 3. Lord Nash explained that this would cover all children who have left local authority care – it is only former relevant children aged over 21 and who are not in education or training who are not currently able to receive support from a personal adviser, and were therefore the subject of Clause 3.

The Minister provided “reassurance that local authorities will continue to develop and review pathway plans. As corporate parents, they will do this irrespective of other partners and the support that they bring. Local

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<sup>50</sup> [HL Deb 14 June 2016 c1114](#)

<sup>51</sup> [HL Deb 14 June 2016 c1118](#)

<sup>52</sup> [GC Deb 4 July 2014 c124–126](#)

authority-appointed personal advisers will work with the care leavers to review plans on a regular basis”.

Lord Wills also proposed that the existing duty of a local authority “to safeguard and promote the welfare of a child looked after by them, includes, in particular, a duty to promote the child’s educational achievement”<sup>53</sup> – for example through “virtual school heads” – be extended to care leavers (amendment 74). The Minister noted that “in practice, virtual school heads and designated teachers do not suddenly turn a blind eye to the children in care whom they have been looking out for and supporting just because they have reached the age of 18. The arrangements in place will continue up to the time they leave school unless, of course, their circumstances have changed”.<sup>54</sup>

Linked to the support for care leavers, Baroness Massey tabled an amendment to insert a new clause 10 that would have paid the higher rate of Universal Credit for those aged 25 or over to eligible care leavers who were lone parents. Lord Nash cautioned that this would add complexity to Universal Credit, and noted that under “second-chance learning from age 19 to 21”, care leavers can “claim income support and housing benefit if returning to full-time, non-advanced education to make up for missed qualifications”, while “single-parent care leavers who are working will be able to access help with 85% of their childcare costs up to the cap”.<sup>55</sup>

### Report Stage

The Government tabled a number of amendments to Clause 3 (amendments 14, 15, 16 and 18), which, as Lord Nash explained, following the debate at Committee Stage it had been recognised by the DfE “that no care leaver should feel that they cannot receive support between the ages of 21 and 25 because they had perhaps indicated at an earlier stage that it was not needed”, and therefore the amendments “expressly clarify that local authorities must proactively offer support to every care leaver at least every 12 months”.<sup>56</sup>

In response an amendment tabled by Lord Ramsbotham, Lord Nash added:

the intention is that they will get a regular chance—at least every year—to change their mind if they have previously said no. I do not think we should allow any way for anybody to get out of that ... we do not think there should be any way that local authorities should invite an 18 year-old to contract out of this right.<sup>57</sup>

Also considered were amendments which built upon that tabled by Baroness Massey at Committee Stage concerning Universal Credit and care leavers, and others concerning welfare benefits and tax credits.

The Earl of Listowel tabled amendment 13 concerning welfare benefits for care leavers; as he explained:

This amendment has four parts. The first provides for a reduction in the penalties attached to sanctions targeted at care leavers under the age of 25. The second would provide working tax credit

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<sup>53</sup> *Children Act 1989* as amended, section 22(3A)-(3C)

<sup>54</sup> [GC Deb 4 July 2014 c133](#)

<sup>55</sup> [GC Deb 4 July 2014 c126](#)

<sup>56</sup> [HL Deb 18 October 2016 c2285](#)

<sup>57</sup> [HL Deb 18 October 2016 c2286](#)

for care leavers under 25, and the third would extend the current exemption from the shared accommodation rate for housing benefit for care leavers from 22 to 24. Finally, the amendment would provide an exemption from council tax for care leavers under 25.<sup>58</sup>

The amendment attracted considerable support, although Lord Nash said that while he “agree[d] that it is important that care leavers have the financial support they need to lead independent, successful lives ... I am not convinced that this amendment is the best way to provide that financial support”.

The Minister noted that local authorities have discretion about the design of their council tax reduction and discretionary housing payments (in respect of Housing Benefit support) schemes. He also said that “we do not think it is in care leavers’ interests to remove them entirely from the requirements expected of other jobseekers. However, we already have the flexibility to tailor requirements based on the circumstances of each individual”, adding “I believe that we would do them [care leavers] a disservice if we did not encourage them into work, as we do with other young people”.<sup>59</sup>

Despite the assurances from the Minister, the amendment went to a division, which the Government carried by 188 to 179, meaning that amendment 13 was disagreed to.

### **Third Reading**

No amendments were tabled to Clause 3.

### **Commentary on the proposal**

The Local Government Association (LGA) described the proposal in HL Bill 1 as “a positive step”, but cautioned that “new burdens funding is needed to ensure that funding is not simply diverted from other support services for vulnerable children”.<sup>60</sup>

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<sup>58</sup> [HL Deb 18 October 2016 c2273](#)

<sup>59</sup> [HL Deb 18 October 2016 c2279–2281](#)

<sup>60</sup> Local Government Association, *Children and Social Work Bill – Committee Stage day 1, House of Lords*, 27 June 2016, p2

## 2.4 Education

### Explanation of Clauses 4 to 7 of Bill 99

Clauses four to seven of the Bill as brought from the Lords concern the educational attainment of looked after and certain previously looked after children.

**Clause 4** in the Bill concerns duties on local authorities to promote the educational achievement of relevant previously looked after children – that is, children who have left care through adoption, Special Guardianship Order or Child Arrangements Order. Among other things, it would introduce new Section 23ZZA into the *Children Act 1989*, to require local authorities to make advice and information available to those with parental responsibility, designated teachers in maintained schools and academies and any other person considered appropriate by the authority. The purpose of this is to promote the educational achievement of certain previously looked after children. Local authorities would be required to appoint an officer to discharge these duties.

**Clause 5** would insert new Section 20A into the *Children and Young Persons Act 2008* to require maintained schools to have a designated person responsible for promoting the educational achievement of certain previously looked after children. Again, these children are those who have left care by adoption, Special Guardianship Order or Child Arrangements Order. The Secretary of State would be able to prescribe minimum qualifications for the post-holder. Maintained schools' governing bodies would be required to have regard to any guidance issued. **Clause 7** is linked, and would require the designated teacher in such schools to have regard to the guidance, as well as the governing body.

**Clause 6** concerns academy schools, seeking to put them on a similar statutory footing to maintained schools as regards looked after and previously looked after children. Many of the rules about academies' operation are contained in their funding agreements with the Secretary of State for Education. The clause would insert new section 2E into the *Academies Act 2010* to place a *statutory* duty on academy trusts to require them to identify a designated person with responsibility for promoting the educational achievement of looked after and relevant previously looked after pupils. As for maintained schools, the Secretary of State could prescribe the qualifications the designated person should have in regulations. The academy proprietor would have to ensure the designated person had regard to any statutory guidance in discharging their statutory duties.

### Statistics on educational attainment of looked after and previously looked after children

Educational outcomes for looked after children are substantially below those for other children at all levels. The table below summarises headline attainment and progress measures for primary and secondary school aged pupils in 2015.

**Educational outcomes for looked after and former looked after children, England 2015**

	Looked after <sup>a</sup>	Not looked after	Gap (% points)	Care leavers <sup>b</sup>		
				Adopted children	Special guardianship orders	Child arrangements orders
<b>Key Stage 1 results</b>						
% achieving level 2+ in:						
Reading	71	91	20	..	..	..
Writing	63	88	25	..	..	..
Maths	73	93	20	..	..	..
<b>Key Stage 2 results</b>						
% achieving level 4+ in:						
Reading, writing and maths	52	80	28	68	65	64
% making at least the expected progress KS1-2 in:						
Reading	82	91	9	79	76	77
Writing	84	94	10	70	69	69
Maths	77	90	13	69	68	72
<b>Key stage 4 results</b>						
% achieving:						
5+ GCSEs at grades A*-C	18.3	64.1	45.8	31.0	26.9	30.6
5+ GCSEs at grades A*-C including English & maths	13.8	53.2	39.4	22.8	21.1	20.2
A*-C in English & maths	15.9	55.2	39.3	25.1	24.0	25.0
% making at least the expected progress KS2-4 in:						
English	36.8	69.6	32.8	45.7	46.4	51.2
Maths	29.3	65.6	36.3	38.0	41.8	35.0

(a) Children looked after continuously for at least twelve months as at 31 March excluding those children in respite care

(b) Children who are identified as having ceased to be looked after through one of the following means and matched to performance data.

The DfE estimates the KS2 data covers around two thirds of children adopted from care and 30% at GCSE. Coverage is slightly less for children leaving care with a SGO or CAO.

.. Not available

Source: Outcomes for children looked after by LAs: 31 March 2015, DfE

At the end of Key Stage 1<sup>61</sup> looked after children were 20-25 percentage points less likely than other children to have met the expected standards in reading, writing and maths. The gap was largest in writing with just over 60% of looked after children assessed at level 2 or higher compared to almost 90% of other children. Performance of looked after children has gradually improved over time, but the gaps are virtually the same as in 2012.

Key Stage 2 results<sup>62</sup> show a slightly larger gap in the headline attainment measure with just over half of looked after children reaching the expected standard in (all of) reading, writing and maths compared to more than three-quarters of other children. Gaps were much smaller on the progress measures<sup>63</sup> at around 10 points for each subject.

Attainment gaps were largest at GCSE level. Fewer than 14% (around one in seven) looked after children passed five or more GCSEs/equivalent at A\*-C including English and maths. More than half of other pupils met this headline standard. The gap was almost 40 percentage points and was even larger when the standard excludes English and maths. The gaps on the progress measures were somewhat smaller, but much larger than those seen up to Key Stage 2. Just over

<sup>61</sup> Pupils aged 6 at the start of the school year

<sup>62</sup> Pupils aged 10 at the start of the school year

<sup>63</sup> The proportion of pupils making at least the expected progress in each subject from the end of Key Stage 1 to the end of Key Stage 2

one third of looked after children made the expected progress in English to their GCSE exam and less than one third in maths.

Looked after children are much more likely to have some form of identified Special Educational Needs (SEN). In 2015 60% had SEN compared to 15% of other children. Their identified needs were even more likely to be 'severe'; 38% had a statement or EHC plan, ten times the rate for other children.<sup>64</sup>

When attainment data groups pupils by SEN status the gaps in performance at Key Stage 2 are much smaller. In 2015 82% of looked after children without SEN achieved level 2 or better in reading, writing and maths compared to 90% of other children without SEN. There was no gap between looked after children and others for either of the groups with SEN (with or without statements or plans).<sup>65</sup>

Gaps in attainment by SEN status at GCSE were still substantial. In 2015 32% of looked after children without SEN passed five or more GCSEs/equivalent at A\*-C including English and maths. This was half the level among other children without SEN. Absolute gaps in performance among the SEN groups were smaller, but with relatively few pupils with SEN reaching this standard the relative gaps were large.

### **Children adopted from care or subject to an SGO or CAO**

New 'experimental' data has been published on former looked after children who were adopted or were the subject of a Special Guardianship Order (SGO) or Child Arrangements Order (CAO). These results are included in the table above.

Coverage of this data is well below levels for other figures on looked after children, especially at GCSE level, so the results should be viewed with caution however, it suggests that moving out of care improves child performance.

In 2015 more of these children (than those still looked after) reached the expected standard in reading, writing and maths at Key Stage 2, but attainment was still below the non-looked after rate. There was no gap between adopted and still looked after children when only those without SEN were included. Differences between results for adopted children or those subject of a SGO or CAO were small.

Attainment at GCSE for this group was again above levels among looked after children, but well below the national average. There were still substantial gaps in attainment even among those without SEN. 41% of adoptees without SEN achieved five or more GCSEs/equivalent at A\*-C including English and maths compared with 31-32% of children subject to an SGO or CAO and 64% of non-looked after children without SEN.

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<sup>64</sup> [Children looked after in England including adoption: 2014 to 2015](#), DfE (Table 4a)

<sup>65</sup> [Outcomes for children looked after by LAs: 31 March 2015](#), DfE



### Activities of care leavers aged 17+

At the end of March 2016, 7% of care leavers aged 19-21<sup>66</sup> were in higher education, 22% in any form of full-time education, 24% in training/employment and 40% not in education, employment or training (NEET). Local authorities were not in touch with 7%.<sup>67</sup>

These data are not directly comparable with national figures for all young people of this age, but they do give a broad indication of the size of the differences involved. The NEET rate at the same time for all 19-24 year olds in England was 24%<sup>68</sup> while 41% of people aged 17-20 in England in 2014-15 had started in higher education.<sup>69</sup>

New 'experimental' data has recently been published on care leavers aged 17 and 18. Coverage of the data is not complete so the finding should again be viewed with some caution. Given that there were many more care leavers aged 18 only those rates are included here.

At the end of March 2016, 3% of 18 year old care leavers were in higher education and 39% in any form of full-time education. 19% were in training or employment and 33% were NEET. Again national rates for all young people of this age can give us a guide for comparison only. The NEET rate was 11%,<sup>70</sup> 26% had started higher education<sup>71</sup> and 50% were in some form of full-time education.<sup>72</sup>

### Current duties of local authorities and schools

There are a range of current statutory duties on school governing bodies and local authorities in relation to the education of looked after children. These include:

- A requirement for maintained schools to have a designated person to promote the educational achievement of looked after children (S. 20 of the *Children and Young Persons Act 2008*, as amended). Academies may be subject to similar requirements through clauses in their funding agreements (see box).
- A requirement for the governing body of a maintained school to have regard to departmental guidance about the discharge of this duty (S. 20 of the *2008 Act*). This duty to have regard to guidance does not currently extend to the designated person. As above, academies may be subject to similar requirements through clauses in their funding agreements.
- A requirement for local authorities to appoint officers responsible for promoting the educational achievement of looked after children (Section 22(3A) to (3C) of the *Children Act 1989*). These appointees are known as virtual school heads (VSHs), and their role currently does not formally cover previously looked after children who've left care through specified means.

#### Maintained schools:

Schools funded by the local authority, and which the local authority has various degrees of involvement in, depending on school category.

#### Academies and free schools:

State-funded schools independent of the local authority. Funding agreements made between the academy trust and the Secretary of State set out the rules on their operation.

<sup>66</sup> All children who had been looked after for at least 13 weeks which began after they reached the age of 14 and ended after they reached the age of 16.

<sup>67</sup> [Children looked after in England including adoption: 2014 to 2015](#), DfE (Table F1)

<sup>68</sup> [NEET statistics quarterly brief: April to June 2016](#), DfE

<sup>69</sup> [Participation rates in higher education: 2006 to 2015](#), DfE

<sup>70</sup> [NEET statistics quarterly brief: April to June 2016](#), DfE

<sup>71</sup> [Participation rates in higher education: 2006 to 2015](#), DfE

<sup>72</sup> [Participation in education, training and employment: 2015](#), DfE



- The Department for Education has published statutory guidance on local authorities' duties in this area:
  - [DfE guidance, Promoting the education of looked after children, 23 July 2014](#)

### **School admissions**

In England, looked after and previously looked after children who have left care through domestic adoption, Special Guardianship Order or Child Arrangements Order must usually be given the highest priority for admission to a state school, in line with the statutory [School Admissions Code](#).<sup>73</sup>

### **Additional school funding**

Pupil premium plus is extra funding for schools for looked after and some previously looked after children in England. Its current value is £1,900 per annum per child, for both primary and secondary pupils. It has been payable (originally at a lower rate) in respect of looked after children since 2011-12. In respect of qualifying previously looked after children, it has been payable since 2014-15. Nationally, pupil premium plus funding in 2016-17 was worth around £175 million.<sup>74</sup>

### **Policy background to education provisions**

In March 2016, the Government published a White Paper, [Educational Excellence Everywhere](#). In this, it said it was looking at expanding the role of virtual school heads to cover children who had left care through adoption. It recognised that:

Many children adopted from the care system will also have suffered trauma and abuse. The emotional impact of this can continue to prevent them from making progress at school – indeed, recent school performance data confirms that adopted children significantly underperform compared to children who have never been in care.<sup>75</sup>

The Government also committed to continued work with local authorities and schools to ensure that they were promoting the educational attainment of looked after children. They also proposed to “increase targeted support” for looked after and previously looked after children “through the pupil premium plus, as part of our national funding formula proposals”.<sup>76</sup>

### **Stakeholder commentary on the Bill's education clauses**

Responding to the publication of the March *2016 Educational Excellence Everywhere* White Paper, Adoption UK said it was “delighted” that the Government was considering “changing legislation

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<sup>73</sup> Department for Education, [School Admissions Code](#), December 2014.

<sup>74</sup> Department for Education/ Education Funding Agency, [Pupil premium: allocations and conditions of grant 2016 to 2017](#), updated 28 July 2016.

<sup>75</sup> Department for Education, [Educational Excellence Everywhere](#), Cm 9230, March 2016, p. 100

<sup>76</sup> Department for Education, [Educational Excellence Everywhere](#), Cm 9230, March 2016, p. 117. Details about the national funding formula proposals can be found in a separate House of Commons Library briefing, [School funding in England: Current system and proposals for 'fairer school funding'](#).

to extend the current role of Virtual School Heads to adopted children". It continued:

Adoption UK has been campaigning for a better understanding of the issues facing adopted children in schools - so that staff are better equipped to meet their needs.

Adopted children's early childhood experiences can often lead to behavioural, physical and emotional difficulties which play out in a school environment, which is not always attuned to their needs.

In a recent survey of our members 80% of adoptive parents said their child needs more or different support in school because of their early childhood experiences. Two thirds (66%) of parents told us the school their child attends, and/or their teacher, does not understand the impact of their child's early life experiences or their ability to engage with education.<sup>77</sup>

Responding to the Bill as first introduced, the Local Government Association (LGA) said "it is welcome that the duties relating to educational achievement (Clauses 4 to 7) apply equally to maintained schools and academies. This will be particularly important if the Government continues in its aim of a fully academised system."<sup>78</sup>

## Consideration by the House of Lords

During the Bill's Lords Stages, debate on the education clauses (Clauses 4 to 7) focused on a range of issues, including: the resources available for virtual school heads in discharging their expanded role; their application to children adopted outside England and children adopted under earlier adoption legislation; and whether the clauses adequately addressed pre- and post-school education.

### Second Reading

Introducing Clauses 4 to 7, Lord Nash said that their intention was to:

[E]nsure that adopted children and those in other long-term placements receive ongoing help to improve their educational outcomes. The role of virtual school heads, who currently act as champions for the interests of looked-after children across local authorities, and the role of designated teachers, who hold a similar role in schools, will be extended to adopted children and children who are in long-term placements with other members of their family or special guardianship orders. This does not mean that the same support has to be offered to every child. We will expect the virtual school heads and designated teachers to use their professional judgement to decide on the most appropriate form and level of help to provide.<sup>79</sup>

Baroness Hughes of Stretford welcomed the education measures, but questioned whether the focus on school-age education in these clauses was adequate, asking whether it was:

Not time that we stopped tinkering with the system by adding small measures here and there and instead had a relentless, end-to-end focus on education for these children with proposals that

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<sup>77</sup> Adoption UK press release, '[Government to look at extending role of Virtual School Heads to include adopted children](#)', 18 March 2016

<sup>78</sup> LGA briefing, '[Children and Social Work Bill Second Reading, House of Lords 14 June 2016](#)', undated.

<sup>79</sup> [HL Deb 14 June 2016, vol. 774, c114](#)

go much further in spanning the education needs of looked-after children and care leavers right from the early years through to [...] higher education and beyond?"<sup>80</sup>

### Committee Stage

Lord Watson of Invergowrie spoke to an amendment to Clause 4 (the duty to provide information to specified persons to promote the educational attainment of previously looked after children). The amendment would have required local authorities to provide information to any person with parental responsibility, as well as parents. Speaking to the amendments, Lord Watson explained that in his view, "the term 'parent' is unnecessarily narrow because, by definition, many of the young people we are talking about will not have parents."<sup>81</sup> Baroness Evans of Bowes Park gave assurances that the Government would consider the amendment and would consult Government lawyers on this issue.<sup>82</sup> The amendment was withdrawn.

Baroness Hughes of Stretford spoke to amendments which would have inserted new clauses requiring the collection and publication of data on participation in higher education by looked after and previously looked after children. The new clauses would also have given universities a duty to support these children. In her view, she said, it was:

[T]ime to bring to the higher education sector the same obligations we have placed on schools, colleges and local authorities, and to try to make a real difference to the numbers of looked-after children going to university and coming out successfully.<sup>83</sup>

In response, Baroness Evans said that universities, as autonomous institutions, were best placed to determine how to support their students. She also outlined measures the Government was already taking on these issues, which included providing funding for the National Network for the Education of Care Leavers and requiring universities to publish a wider range of data.<sup>84</sup>

### Report Stage

At Report Stage, Baroness Walmsley, Baroness King of Bow and others tabled a series of amendments, the effect of which would have been to extend educational entitlements such as pupil premium plus and priority school admissions to children adopted outside of England. The amendments would also have brought children adopted outside of England within the remit of Clauses 4 to 6. Speaking to the amendments in this group, Baroness Walmsley explained:

There used to be a view that children adopted from abroad did not come from the care system in their country. That may have been the case some time ago but that has changed [...] Most of the children come from care in the countries from which they are adopted. That means that they have exactly the same traumatic experiences that children adopted from care in this country have,

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<sup>80</sup> [HL Deb 14 June 2016, vol. 774, c1127](#)

<sup>81</sup> [GC Deb 04 July 2016, vol. 774, c156](#)

<sup>82</sup> [GC Deb 04 July 2016, vol. 774, c156](#)

<sup>83</sup> [GC Deb 6 July 2016, vol. 774, c201](#)

<sup>84</sup> [GC Deb 6 July 2016, vol. 774, cc205-206](#)

and therefore they have exactly the same needs. Those children have already benefited from several elements of the adoption support fund, but until today they had not benefited from the educational advantages that were given to children adopted from this country.<sup>85</sup>

Lord Nash gave an undertaking to table amendments in the Commons “to bring children adopted from care outside England within the scope of Clauses 4 to 6”.<sup>86</sup> Baroness Walmsley and Lady King strongly welcomed this undertaking.<sup>87</sup> Lord Nash continued, however, that specific entitlements like pupil premium plus and priority school admissions were not provided for in primary legislation, so it would not be appropriate to include these sorts of amendments in the current Bill.

A Government amendment to Clause 4, which extended the requirement on local authorities to share information with all persons with parental responsibility, was agreed to. Similarly, a Government technical amendment extended the provisions in Clauses 4 and 5 to (older) children adopted under the earlier Adoption Act 1978 and who would now be in secondary school.<sup>88</sup>

## 2.5 Adoption

### Explanation of Clauses 8 and 9 of Bill 99

Clauses 8 and 9 would extend the current considerations of the court when making decisions about the long term placement of children so that it includes an assessment of the child’s current and future needs, including any current and future needs resulting from the impact of harm that a child has suffered (or are likely to have suffered), and of any relationship with a prospective adopter.<sup>89</sup>

**Clause 8** would extend the definition of “permanence provisions” stated in section 31 of the *Children Act 1989* amended “so, in addition to considering the matters currently included in s31(3B) of that Act, the courts will also be required to consider provisions in the plan that set out the impact on the child concerned of any harm they have suffered or are likely to have suffered; their current and future needs (including needs arising from that impact) ; and the way in which the long term plan for the child’s upbringing would meet all of those current and future needs”.

The explanatory notes to Bill 99 note that “a requirement for local authorities to provide evidence to court on the matters mentioned above will be set out in the regulations made under section 31A of the Children Act 1989”.<sup>90</sup>

**Clause 9** would amend section 1 of the *Adoption and Children Act 2002* and requires courts and adoption agencies when coming to a decision relating to the adoption of a child, to always consider that

<sup>85</sup> [HL Deb 18 October 2016, vol. 774, cc2288-2289](#)

<sup>86</sup> [HL Deb 18 October 2016 vol. 774, c2288](#)

<sup>87</sup> *Ibid.*

<sup>88</sup> [HL Deb 18 October 2016, vol. 774, c2288](#)

<sup>89</sup> [Bill 99-EN](#), p5, para 4

<sup>90</sup> [Bill 99-EN](#), p16, paras 75–76

child's relationship with their prospective adopters, if the child has been placed with those prospective adopters.<sup>91</sup>

This would mean that “whenever a court or adoption agency is coming to a decision relating to the adoption of a child ... the court or adoption agency must have regard to the following matters”, one of which is “the relationship which the child has with relatives, with any person who is a prospective adopter with whom the child is placed and with any other person in relation to whom the court or agency considers the relationship to be relevant”, where the term “relative’, in relation to a child, include the child's mother and father (emphasis shows change made by Clause 9).

Section 1(2) of the 2002 Act would continue to apply, namely that “the paramount consideration of the court or adoption agency must be the child's welfare, throughout his life”.

## Number of children adopted and special guardianships

The table below shows a time series of available data for England on special guardianships and adoptions.

The *Adoption and Children Act 2002* amended the *Children Act 1989* to introduce a new special guardianship order. These orders are intended for those children who cannot live with their birth parents and who would benefit from a legally secure placement. It is a more secure order than a Residence Order because a parent cannot apply to discharge it unless they have the permission of a court to do so, however, it is less secure than an Adoption Order because it does not end the legal relationship between the child and his/her birth parents.

Special guardianship orders became available in 2005 and statistics on the number of orders granted are available from 2006. It is apparent from the table below that a decline in the number of adoptions between 2006 and 2011 was associated with an increase in special guardianships. When adoptions and special guardianships are combined the absolute numbers showed a year on year increase until 2015. In 2016, although special guardianships continued to increase, the number of adoptions fell by -12%.

### Children ceasing to be looked after due to adoption and special guardianships, England

As at 31 March	Number of children			% of children who ceased to be looked after		
	Adoptions	Special guardianships	Adoptions and special guardianships	Adoptions	Special guardianships	Adoptions and special guardianships
2006	3,700	70	3,770	14.3%	0.3%	14.6%
2007	3,320	760	4,080	13.3%	3.0%	16.3%
2008	3,160	1,130	4,290	12.9%	4.6%	17.5%
2009	3,320	1,240	4,560	13.3%	5.0%	18.2%
2010	3,200	1,290	4,490	12.6%	5.1%	17.7%
2011	3,080	1,780	4,860	11.4%	6.6%	17.9%
2012	3,470	2,150	5,570	12.6%	7.8%	20.4%
2013	4,010	2,780	6,780	14.0%	9.7%	23.7%
2014	5,060	3,360	8,380	16.6%	10.9%	27.5%
2015	5,350	3,560	8,910	17.2%	11.4%	28.6%
2016	4,690	3,830	8,520	15.1%	12.3%	27.4%

Source: Department for Education *Children Looked After in England (various years)* Table D1

<sup>91</sup> [Bill 99-EN](#), p17, paras 77

## Recent issues in adoption

### Government approach and policy

Under the Coalition Government, there was support for an increase in the number of children being adopted; for example, the then Prime Minister, David Cameron, said in March 2013:

Far too many children are left for far too long in care when we know that they could be adopted into loving homes. Taking some of that money, and really encouraging local authorities to raise their game and improve what they do, can transform the life chances of other people who would be stuck in care. We all know that the state is not a good parent, and we want to see more children adopted more quickly, so more can grow up in a loving home.<sup>92</sup>

Lord Nash at Second Reading of the Bill said “the Government are strongly pro-adoption”.<sup>93</sup>

Recent key policy changes are shown below:

- November 2010 – Government announces it has “established a ministerial advisory group on adoption to provide expert advice on how to remove barriers to adoption and to reduce delay in placements”.<sup>94</sup> In addition, the then Children’s Minister, Tim Loughton, “wrote to directors of Children’s Services and lead members to ask them to do everything possible to increase the number of children appropriately placed for adoption, and to improve the speed with which decisions are made”.<sup>95</sup>
- February 2011 – Government states that it “wants to see more children adopted where this is in their best interests” and publishes new statutory adoption guidance to local authorities;<sup>96</sup>
- July 2011 – Mr Loughton announces that Martin Narey will be appointed as the new Ministerial Adviser on Adoption,<sup>97</sup> and sets out his [remit](#);
- March 2012 – the Government published a strategy document, [An Action Plan for Adoption: Tackling Delay](#), which was accompanied by a [written statement](#) in the Commons;
- May 2012 – “Adoption Scorecards” are introduced by the Government which “highlight three key indicators showing how quickly each local authority places children in need of adoption”;<sup>98</sup>
- July 2012 – the House of Lords debate and agree new regulations (*Adoption Agencies (Panel and Consequential Amendments) Regulations 2012*). In those cases where a social worker’s recommendation that a child should be adopted need to be

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<sup>92</sup> [HC Deb 6 March 2013 c958](#)

<sup>93</sup> [HL Deb 14 June 2016 c1114](#)

<sup>94</sup> [HL Deb 16 November 2010 cWA181](#)

<sup>95</sup> [HC Deb 18 March 2011 c696W](#)

<sup>96</sup> GOV.UK, [Breaking down barriers to adoption](#), Press release, 22 February 2011

<sup>97</sup> GOV.UK, [Ministerial adviser on adoption announced](#), Press release, 7 July 2011

<sup>98</sup> GOV.UK, [Adoption delays: scorecards show extent across England](#), Press release, 11 May 2012

scrutinised by the court, the adoption panel should no longer have a role;<sup>99</sup>

- January 2013 – a new strategy, [Further Action on Adoption: Finding More Loving Homes](#), is published by the Government and accompanied by a [written statement](#); the strategy put forward proposals to “address ... the national crisis in adopter recruitment ... in the short and long term”, together with £150 million of extra funding to “help to secure reform of the adoption system”;
- April 2013 – new “First4Adoption” service funded by the Government is launched to help prospective adoptive parents;<sup>100</sup>
- May 2013 – the Government publishes its response to a consultation, [Adoption and Fostering: Tackling Delay](#), prompting changes across a number of statutory instruments. The Government also publishes [Supporting Families Who Adopt](#) which sets out what the Government is doing to help adoptive families;
- July 2013 – “two-stage adoption process introduced in July 2013 to speed up adoptions. Initial stage of ‘Registration & Checks’, lasting up to two months, facilitates speedy access to the formal second stage of ‘Assessment and Approval’, taking up to four months”;<sup>101</sup>
- August 2013 – Government announces “£16 million funding – available from later this year until 2016 – will help new and existing voluntary adoption agencies (VAAs) to develop new and creative ways to recruit more adopters”;<sup>102</sup>
- September 2013 – £19.3 million funding announced for the Adoption Support Fund to “provide adoptive families with the right support - from cognitive therapy to music and play therapy and attachment based therapy”;<sup>103</sup>
- December 2013 – a series of measures are announced including:
  - “£50 million for councils as they prepare to implement reforms and work with voluntary adoption agencies (VAAs) - and each other - to recruit more adopters”,
  - “a new adoption leadership board supporting local authorities drive through the reforms in the Children and Families Bill, and help adoption agencies stay on track recruiting more adoptive parents”,
  - “clickable maps have been published to help would-be adopters find out more about agencies in their area and across the country”;<sup>104</sup>

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<sup>99</sup> [HL Deb 25 July 2012 c353](#)

<sup>100</sup> GOV.UK, [New online service to support one in seven who would adopt](#), Press release, 5 April 2013

<sup>101</sup> LaingBuisson, *Children's Care and Special Education Services*, 2<sup>nd</sup> edition, p65

<sup>102</sup> GOV.UK, [£16 million boost to attract more adopters](#), Press release, 8 August 2013

<sup>103</sup> GOV.UK, [New £19.3 million support fund for adoptive parents](#), Press release, 11 September 2013

<sup>104</sup> GOV.UK, [Adoption: £50 million funding boost and new interactive maps](#), Press release, 24 December 2013



- February 2014 – revised statutory guidance published to “help social workers place children with adoptive parents more quickly”;<sup>105</sup>
- March 2014 – *Children and Families Act 2014* receives Royal Assent. Changes included:
  - prospective adopters will be allowed to search and inspect the Adoption and Children Act register and see the names of children waiting to be adopted,
  - family courts can make orders either allowing or prohibiting post-adoption contact between a child and a person named in the order,
  - a duty on local authorities to consider placing a child for whom they are considering adoption, with local authority foster carers who are also approved as prospective adopters should there be no appropriate friends or family care for the child - so called fostering-for-adoption placements,
  - placing a duty on local authorities to inform any prospective adopter or adoptive parent about their entitlement to and an assessment for adoption support services by the local authority,
  - repealing previous legislation which had placed a duty on a local authority to consider the religious persuasion, racial origin and cultural and linguistic background of a child when matching them with prospective adopters;<sup>106</sup>

It also allowed for the Secretary of State to order local authorities to delegate to one or more other adoption agencies their function to recruit, assess and approve adoptive parents;

- May 2015 – the new Government announced plans to create regional adoption agencies,<sup>107</sup> and in June 2015 announced £4.5 million of funding for trailblazer local authorities;
- July 2015 – in the Summer Budget, it is announced that there will be “£30 million to further speed up the adoption process while paving the way for the introduction of regional adoption agencies”;<sup>108</sup>
- October 2015 – Government announces “a new coalition of adoption champions, who will advise - and challenge - ministers on how help and support for families can be improved”;<sup>109</sup>

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<sup>105</sup> GOV.UK, [New rules for social workers following adoption reform](#), Press release, 28 February 2014

<sup>106</sup> “Legal Update: In a Nutshell - Revised statutory guidance on adoptions”, *Children and Young People Now*, 28 April 2014

<sup>107</sup> GOV.UK, [New measures to end delay for children awaiting adoption](#), Press release, 23 May 2015

<sup>108</sup> HM Treasury, [Summer Budget 2015](#), Policy paper, 8 July 2015, section 3.4

<sup>109</sup> GOV.UK, [Record number of families helped by adoption support fund](#), Press release, 20 October 2015



- March 2016 – the Government publishes a new adoption strategy, [Adoption – A vision for change](#), and appointed Andrew Christie as the new Chair of the Adoption Leadership Board;<sup>110</sup>
- March 2016 – the *Education and Adoption Act 2016* receives Royal Assent, which allows the Secretary of State to “direct one or more local authorities in England to make arrangements for any or all of their specified adoption functions to be carried out on their behalf by one of the local authorities named or by another adoption agency”, i.e. regional adoption agencies;<sup>111</sup>

### **Legal rulings and the impact on adoptions (Re B-S and Re B)**

There are two pieces of case law which are seen as having “moved the goalposts” on adoption:<sup>112</sup>

- *Re B (A Child)* [2013] UKSC 33, 12 June 2013 – the decision of the Supreme Court found that “a high degree of justification is needed under article 8 [of the European Convention on Human Rights – the right to family life] if a decision is to be made that a child should be adopted or placed in care with a view to adoption against the wishes of the child's parents. Domestic law runs broadly in parallel with article 8 in this context: the interests of the child must render it necessary to make an adoption order. A care order in a case such as this must be a last resort”.<sup>113</sup>
- *Re B-S (Children)* [2013] EWCA Civ 1146, 17 September 2013 – the Court of Appeal judgment included the following: “we have real concerns, shared by other judges, about the recurrent inadequacy of the analysis and reasoning put forward in support of the case for adoption, both in the materials put before the court by local authorities and guardians and also in too many judgments. This is nothing new. But it is time to call a halt”. It added that the judgement in *Re B* had noted that “orders contemplating non-consensual adoption – care orders with a plan for adoption, placement orders and adoption orders – are ‘a very extreme thing, a last resort’, only to be made where ‘nothing else will do’”.<sup>114</sup>

While the judgements did not alter the law on adoption, Kingsley Knight, a legal training provider, contested that both judgments “challenged social workers, and children’s guardians to examine their standards of analysis and how evidence should now be presented in the family courts [and] had required a complete rethink of the way in which evidence is presented and analysed in cases”. It was also noted that *Re B* “reminds us that the child’s interests include being brought up by the parents or wider family, ideally by at least one of his parents unless the

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<sup>110</sup> GOV.UK, [Education Secretary unveils a new blueprint for adoption](#), Press release, 27 March 2016

<sup>111</sup> [Education and Adoption Act 2016–EN](#), para 50

<sup>112</sup> National Adoption Leadership Board, [Impact of Court Judgments on Adoption – What the judgments do and do not say](#), November 2014, p2, para 3

<sup>113</sup> Family Law Week, [In the matter of B \(A Child\) \[2013\] UKSC 33](#), webpage [taken on 26 May 2015]

<sup>114</sup> [Re B-S \(Children\) \[2013\] EWCA Civ 1146](#), para 22

overriding requirements of the child's welfare make that not possible".<sup>115</sup>

Further explanation was provided by the National Adoption Leadership Board:

The law makes clear that, if a child cannot be cared for by his or her birth family, the local authority must consider whether any connected person (such as extended family or friends) could care for the child. Any assessment of a connected person needs to consider whether that person is capable of providing good enough care (with appropriate support) until the child achieves his or her majority or is old enough to live independently. The child has the right to live in their extended family and realistic options must be properly considered. But living in their extended family should not be at the cost of having their physical and emotional needs met. Children should only be placed with a connected person where the court is satisfied that the assessments reveal no real likelihood of the child coming to significant harm.<sup>116</sup>

Following these judgments, the National Adoption Leadership Board noted that "between 1 September 2013 and 30 June 2014":

- Local authority decisions that children should be adopted fell by 47%, from 1,830 to 960;
- Applications for placement orders (the court order that allows a child to be placed for adoption) by local authorities have fallen by 34%, from 1,340 to 880;
- Placement orders granted by the courts have decreased by 54%, from 1,650 to 750.<sup>117</sup>

The National Adoption Leadership Board published [\*Impact of Court Judgments on Adoption – What the judgments do and do not say\*](#), the "principle message" of which was:

The judgments [in *Re B and Re B-S*] do not alter the legal test for adoption.

Courts must be provided with expert, high quality, evidence-based analysis of all realistic options for a child and the arguments for and against each of these options. This does not mean every possible option. The judgment in *Re B-S* clearly states that the "evidence must address all the options which are realistically possible".

Where such analysis has been carried out and the local authority is satisfied that adoption is the option required in order to meet the best interests of the child, it should be confident in presenting the case to court with a care plan for adoption.<sup>118</sup>

The guidance was produced following the judgment in the Court of Appeal by Sir James Munby, the President of the Family Division, and

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<sup>115</sup> Kingsley Knight, [\*Challenges for Local Authorities following the impact of Re B \(A child\) and Re B – S \(Children\) to public children and adoption cases\*](#), 25 June 2015

<sup>116</sup> National Adoption Leadership Board, [\*Impact of Court Judgments on Adoption – What the judgments do and do not say\*](#), November 2014, p6, para 22 [taken from the first4adoption.org.uk website]

<sup>117</sup> First4Adoption, [\*Adoption Leadership Board Publishes "Myth-Buster" on the Impact of Recent Court Judgements\*](#), 11 November 2014

<sup>118</sup> National Adoption Leadership Board, [\*Impact of Court Judgments on Adoption – What the judgments do and do not say\*](#), November 2014, p2, para 5

others, in the case of *Re R (A child)* [2014] EWCA Civ 1625, where the ruling was given on 31 October 2014. An article in *Family Law* summarised the judgement.<sup>119</sup>

## Announcement and policy formulation

In November 2015, the then Prime Minister announced a package of reforms to “increase the number of children adopted and speed up the process”, which included “changes to adoption law”:

The government is actively considering changes to adoption law, to make sure decisions are being made in the child’s best interests. Ministers will look at proposals so that where adoption is the right thing for children, social workers and courts pursue this. Over the last 2 years, the number of decisions for adoption being made by the courts has fallen by up to 50%.<sup>120</sup>

In January 2016, the then Education Secretary, Nicky Morgan, said that the Government would be “changing the law on adoption to make sure decisions rightly prioritise children’s long-term stability and happiness, so that children are placed with their new family as quickly as possible, helping them fulfil their potential and get the very best start in life”.

The DfE added:

For the first time ever, the law will explicitly state that councils and courts must prioritise the quality of reparative care the child will need in order to recover from episodes of devastating abuse and neglect, and whether the placement will last through the child’s adolescence.<sup>121</sup>

In the March 2016 document, [Adoption – A vision for change](#), the DfE noted that “from September 2013, the number of decisions being made by local authorities to pursue adoption has been declining sharply, as have the number of placement orders granted by the courts”, noting the impact of the two judgments in *Re B* and *Re B-S*.<sup>122</sup>

The DfE stated that:

In order to ensure that the right factors [timeliness, quality of care and stability] ... are properly prioritised, we intend to change the legal framework under which permanence decisions are made. We intend to amend the Children Act 1989 to ensure the following factors are properly prioritised when local authorities and courts are considering the best permanent option for the child at the end of care proceedings:

- whether the quality of care on offer under the different potential placements being considered will be sufficient to meet the child’s needs, especially in the light of the previous abuse and neglect the child may have suffered, and their need for high quality care to overcome this; and

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<sup>119</sup> Family Law, [Care and placement orders – clarification following Re B-S](#), 16 December 2014

<sup>120</sup> GOV.UK, [PM unveils drive to increase adoptions and cut unacceptable delays](#), press release, 2 November 2015

<sup>121</sup> GOV.UK, [Education Secretary unveils plans to change adoption law](#), Press release, 14 January 2016

<sup>122</sup> Department for Education, [Adoption – A vision for change](#), March 2016, pp18 and 20, paras 3.2 and 3.4

- whether the placement will offer this quality of care throughout the child's childhood (until they are 18) – rather than right now or just in the immediate future.

We intend to bring forward legislation to make these changes as soon as possible.<sup>123</sup>

## Consideration by the House of Lords

### Second Reading

Lord Nash set out the Government's position on adoption:

The Government are strongly pro-adoption because we believe that it offers a critical opportunity for children to move into a long-term placement where they can build a loving relationship with their adoptive parents in a stable and supportive home environment. However, we recognise that this option is still open to only a small percentage of children who can no longer live with their birth parents.<sup>124</sup>

He added that the adoption provisions in the Bill "will ensure that the factors which evidence shows have most impact on children's long-term outcomes will be given due weight when decisions about adoption and other permanent arrangements are made ... [and] will require decision-makers to take proper account of the quality of support a child will need in light of the harm they have suffered or the risk they have been exposed to, and the child's current and potential future needs up until the age of 18". In addition, the Bill would "ensure that the relationship between the child and their prospective adopters is considered".<sup>125</sup>

For the Opposition, Lord Watson argued that "adoption is once more the only destination from care that, it seems, the Government value", and noted that "only one in 20 children in the care system are adopted. Where are the measures to cater for those in foster care, special guardianship and kinship care?". Lord Watson called for "a reform programme which takes a long-term, holistic view of the entire care system and ensures that adequate support is provided to every child".<sup>126</sup>

Baroness Tyler, a Liberal Democrat peer, made similar comments, and noted that in the Bill "there is a fleeting reference to the relationship that a child may have built with a prospective adopter but nothing about children's wishes and feelings about relationships they value or may want to preserve, such as sibling relationships".<sup>127</sup>

### Committee Stage

Clause 8 seeks to add to the existing subsection 3B of Clause 31 of the *Children Act 1989* by extending the definition of "permanence provisions" so that the courts will also be required to consider provisions in the plan relating to three specific areas for the child (harm, needs and upbringing).

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<sup>123</sup> Department for Education, [Adoption – A vision for change](#), March 2016, pp14–15, paras 3.14–3.15

<sup>124</sup> [HL Deb 14 June 2016 c1114](#)

<sup>125</sup> [HL Deb 14 June 2016 c1114](#)

<sup>126</sup> [HL Deb 14 June 2016 c1119](#)

<sup>127</sup> [HL Deb 14 June 2016 c1132](#)

Lord Watson tabled amendment 89 which, as Lord Hunt of Kings Heath, explained, would “[extend] the circumstances under which permanence provisions will operate to embrace long-term foster care”, in part to “avoid some options, particularly adoption, being seen as more important than others in the hierarchy of care”.<sup>128</sup>

The Minister repeated that “the Government are pro adoption” but added that “we also support other forms of permanence”. He said the amendment “would duplicate wording that is already set out elsewhere” and also added that “we have no evidence that local authorities and courts are not clear about what placement options they need to consider during care proceedings”.<sup>129</sup>

Baroness Walmsley’s amendment 90 sought to include “the child’s wishes and feelings” as a further matter to be included in a local authority’s permanence plan, noting that “there are many issues on which the child may have particular wishes and feelings, such as who is to foster them, where they are to live and what contact they are to have with members of their family and others”.<sup>130</sup> In response, the Minister said that while it was “absolutely crucial that a child’s wishes and feelings should play a significant role in any decision-making about their upbringing”, he added that “this principle is already captured in existing legislation”.<sup>131</sup>

Amendment 90A sought to “place a duty on local authorities and specialist NHS children and young people’s mental health services in England to provide long-term support for adopted children”,<sup>132</sup> although the Minister said that there was existing joint statutory guidance on the planning, commissioning and delivery of health services for looked-after children, and future work included the development of a “mental health care pathway for looked-after and formerly looked-after children”.<sup>133</sup>

Clause 9 of the Bill would require courts and adoption agencies, when coming to a decision relating to the adoption of a child, to always consider that child’s relationship with their relatives, which were stated as the child’s mother and father, and prospective adopters (if the child has been placed with those prospective adopters).

Baroness Bakewell of Hardington Mandeville sought to add the child’s grandparents to the definition of “relative”.<sup>134</sup> Baroness Evans responded by saying that:

As for ensuring that grandparents are considered as possible carers at the point when adoption decisions are made, the law already provides for this in the Children Act 1989. Where courts and adoption agencies feel that there is a significant relationship between a child and their grandparents, they have the authority

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<sup>128</sup> [GC Deb 6 July 2016 c208](#)

<sup>129</sup> [GC Deb 6 July 2016 c214](#)

<sup>130</sup> [GC Deb 6 July 2016 c209](#)

<sup>131</sup> [GC Deb 6 July 2016 c214](#)

<sup>132</sup> [GC Deb 6 July 2016 c210](#)

<sup>133</sup> [GC Deb 6 July 2016 c214](#)

<sup>134</sup> [GC Deb 6 July 2016 c219](#)

to consider a grandparent to be a “relevant person” and take that relationship into account.

[...]

However, ... unfortunately not every child will have an existing, positive relationship with their grandparents. That is why we do not believe that it would be the most effective use of courts’ and adoption agencies’ time to legislate that grandparents must be considered in every case. Rather, we believe that courts and agencies should retain the freedom to decide on a case-by-case basis whether a child’s relationship with their grandparents may be relevant, depending on the facts of the case.<sup>135</sup>

### Report Stage

Baroness Walmsley tabled amendment 31 which repeated amendment 90 from Committee Stage, contending that it was not the case that “this principle is already captured in existing legislation”, as previously stated by the Minister.<sup>136</sup> Lord Nash provided clarification that “the child’s wishes and feelings are taken into account by local authorities when a child is looked after. This is a legal requirement under Section 22(4) of the Children Act 1989. When any decision is taken with respect to a child who is looked after, the local authority must ascertain their wishes and feelings”.<sup>137</sup>

Amendment 30, tabled by Lord Hunt, concerned “the risk that fostering will be placed in a lower hierarchical category in relation to the provisions of the Bill”, and argued following the recent step to put “long-term foster care on a legal footing,<sup>138</sup> the opportunity should be taken in this legislation to include it as a permanent option”.<sup>139</sup>

The Minister contended that “local authorities and courts are very clear about what placement options they need to consider during care proceedings. Amendment 30 is therefore not necessary and would not add to the existing legislative framework. It would simply duplicate what is already set out elsewhere in the Children Act 1989”.<sup>140</sup>

The Minister tabled amendment 32, the effect of which was to replace Clause 9 with a new version because, following agreement from the Welsh Government, Clause 9 “will now apply to adoption agencies in Wales, whereas the previous draft of this provision applied to courts in England and Wales and adoption agencies in England”.<sup>141</sup>

### Third Reading

No amendments were tabled.

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<sup>135</sup> [GC Deb 6 July 2016 c224](#)

<sup>136</sup> [HL Deb 18 October 2016 c2294](#)

<sup>137</sup> [HL Deb 18 October 2016 c2297](#)

<sup>138</sup> In his contribution, Lord Hunt noted that “A legal definition for long-term foster care was introduced subsequent to the passing of the Children and Families Act 2014. The Care Planning and Fostering (Miscellaneous Amendments) (England) Regulations 2015 amended the Care Planning, Placement and Case Review (England) Regulations 2010 by providing for the first time a legal definition of long-term foster care and setting out the conditions that must be met” ([HL Deb 18 October 2016 c2293](#))

<sup>139</sup> [HL Deb 18 October 2016 c2293](#)

<sup>140</sup> [HL Deb 18 October 2016 c2298](#)

<sup>141</sup> [HL Deb 18 October 2016 c2298](#)

## Commentary on the proposal

In its response to the Bill during the Lords stages, the Fostering Network called “for an amendment to Clause 8 of The Children and Social Work Bill, to ensure that long-term fostering is on an equal footing with adoption and special guardianship orders when it comes to possible permanence options for children in care”, contesting that “while the clause specifically mentions adoption as a permanence option, it does not explicitly include long-term foster care”.<sup>142</sup>

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<sup>142</sup> Fostering Network, [Children and Social Work Bill](#), webpage 7

## 3. Child safeguarding, and proper performance

### 3.1 Power to secure proper performance in combined authorities

**Clause 11** of the Bill will allow the Secretary of State to “intervene in a Combined Authority in England established under section 105 of the *Local Democracy, Economic Development and Construction Act 2009*, where children’s social care functions have been transferred from a local authority in England to that Combined Authority, and where such functions are not being performed to an adequate standard”.<sup>143</sup>

The matter was not contentious as the Bill passed through the House of Lords – under section 497A of the *Education Act 1996*, the Secretary of State can already intervene in local authority children’s service functions so far as they relate to the functions specified in section 50 of the *Children Act 2004* and section 15 of the *Childcare Act 2006*.

As Lord Nash explained during Second Reading, the clause “is largely a technical amendment designed to put beyond doubt that the Secretary of State’s power to intervene in local authorities whose services are inadequate will also apply where two or more local authorities have combined those services”.<sup>144</sup>

No amendments were tabled in respect of the clause during its passage through the Lords.

### 3.2 Explanation of clauses 11–30 in Bill 99

#### Child Safeguarding Practice Review Panel

As the explanatory notes set out, the Bill “makes provision for the establishment of a central Child Safeguarding Practice Review Panel. Where cases raise issues of national importance the Panel would conduct these reviews and disseminate lessons to the sector at large”.

**Clause 12** imposes a duty on the Secretary of State to establish a Child Safeguarding Practice Review Panel, and appoint the Chair and members of the Panel for a particular period or otherwise, and to remove the Chair or a member “if she is satisfied that they have become unfit or unable to discharge their functions or have behaved in a way not compatible with continuing in office”. The Secretary of State may also provide staff, facilities or other assistance to the Panel, and pay remuneration or expenses to the Chair and members.

**Clause 13** states that the functions of the Panel to be established in Regulations are a) to identify serious child safeguarding cases in England which raise issues that are complex or of national importance, and b)

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<sup>143</sup> [Bill 99–EN](#), p17, para 79

<sup>144</sup> [HL Deb 14 June 2016 c1115](#)



where it considers appropriate, to arrange for such cases to be reviewed under their supervision.

The purpose of such a review is to “identify any improvements that should be made by safeguarding partners or others to safeguard and promote the welfare of children”. The clause sets out the actions the Panel must take when they arrange for a case to be reviewed under their supervision, and the Panel must publish a report after any review, unless they consider it inappropriate to do so, in which case the Panel must publish any information relating to the improvements that should be made following the review. The Secretary of State may make Regulations about various matters relating to the functions of the Panel, and the Panel must have regard to any guidance given by the Secretary of State in connection with its functions.

**Clause 14** sets out what events should be referred to the Panel, namely where a local authority in England knows or suspects that a child has been abused or neglected, and the child either a) dies or is seriously harmed in the local authority’s area, or b) dies or is seriously harmed outside England but while normally resident in the local authority’s area. The Secretary of State can issue guidance in connection with the functions of local authorities under this section.

**Clause 15** permits the Panel to request that information is supplied to it, a reviewer or another person or body specified in the request, for the purpose of enabling or assisting the Panel with the performance of one of its functions. If a person or body refuses to comply with a request can be forced to do so under this section the Panel can apply for a High Court or county court injunction to enforce the request.

The above clauses add new sections 16A to 16D respectively to the *Children Act 2004*.<sup>145</sup>

## Local arrangements for safeguarding and promoting welfare of children

The Bill seeks to reframe the approach to local safeguarding by giving the three key safeguarding partners – the local authority, health services, and the police – greater autonomy to define the approach to be taken locally and the appropriate geographical reach of that approach.

**Clause 16** will require the “safeguarding partners” – the local authority, a clinical commissioning group for an area any part of which falls within the local authority area, and the chief officer of police for a police area any part of which falls within the local authority area – must “make arrangements ... include[ing] arrangements for safeguarding partners to work together to identify and respond to the needs of children in the area .... for themselves and relevant agencies they consider appropriate to work together in exercising their functions, so far as those functions are exercised for the purpose of safeguarding and promoting the

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<sup>145</sup> [Bill 99-EN](#), pp5 and 17-19, paras 6 and 81-106

welfare of children in the area". The Secretary of State will define relevant agencies in regulations.

**Clause 17** will require local safeguarding partners to a) identify serious child safeguarding cases which raise issues of importance to the area, and b) where they consider it appropriate, to arrange for those cases to be reviewed under their supervision, where the purpose of such reviews is to "identify any improvements that should be made by persons in the area to safeguard and promote the welfare of children". The clause sets out the actions the partners must take when they arrange for a case to be reviewed under their supervision. Partners must publish a report, unless they consider it inappropriate to do so, in which case they must publish any information relating to the improvements that should be made following the review that they consider it appropriate to publish. The Secretary of State may make regulations about various issues relating to local child safeguarding practice reviews.

In terms of the arrangements for safeguarding and promoting welfare of children and for child safeguarding practice reviews, **Clause 18** will require the safeguarding partners to publish the arrangements they make, and "the arrangements must include arrangements for scrutiny by an independent person of the effectiveness of the arrangements". The Secretary of State to make regulations which provide for enforcement of the duty to act in accordance with the arrangements, if the Secretary of State considers that no other appropriate means of enforcement is appropriate, although these regulations may not create criminal offences. The safeguarding partners must "prepare and publish, at least annually, a report on the work that they and the relevant agencies for the local authority area have done as a result of the arrangements and how effective the arrangements have been in practice".

**Clause 19** makes similar provision regarding information for the safeguarding partners as Clause 15 does for the Panel.

**Clause 20** allows the safeguarding partners for a local authority area in England to make payments either directly, or by contributing to a fund from which payments may be made, towards expenditure incurred in connection with the arrangements for safeguarding and promoting welfare of children and for child safeguarding practice reviews.

**Clause 21** will allow the safeguarding partners for two or more local authority areas in England to agree that their areas are treated as a single area in respect of the local arrangements for safeguarding and promoting welfare of children, and for the safeguarding partners of the same type to arrange for one of them to carry out the functions behalf of the other.

**Clause 22** requires the safeguarding partners to have regard to any guidance issued by the Secretary of State. The Bill states that the guidance "may include guidance about circumstances in which it may be appropriate for a serious child safeguarding case to be reviewed and matters to be taken into account in deciding whether a review is

making satisfactory progress, or whether a report is of satisfactory quality”.

**Clause 23** provides interpretation of key phrases in the above clauses.

The above clauses insert new sections 16E to 16L into the *Children Act 2004*.<sup>146</sup>

## Child death reviews

**Clause 24** requires the “child death review partners” – a local authority and any CCG whose area falls within that local authority area – to make arrangements for the review of each death of a child normally resident in the area and also, “if they consider it appropriate”, to make arrangements for the review of a death in their area of a child not normally resident there. The partners must make arrangements for the analysis of information about deaths being reviewed.

The purpose of a review is “a) to identify any matters relating to the death or deaths generally, that are relevant to the welfare of children in the area or to public health and safety; and b) to consider whether it would be appropriate for anyone to take action in relation to any matters identified”, and inform any such person of the action they are required to take.

The partners must, “at such intervals as they consider appropriate”, prepare and publish a report on a) what they have done as a result of the arrangements under this section; and b) how effective the arrangements have been in practice.

**Clause 25** makes similar provision for the collation of information in respect of child death review partners as Clause 15 does for the Panel.

**Clause 26**, on funding, allows the child death review partners to make payments towards expenditure incurred in connection with a child death review, either by a) making payments directly, or b) contributing to a fund out of which payments may be made. Child death review partners can provide staff, goods, services, accommodation or other resources to any person for purposes connected with the child death review arrangements.

**Clause 27** makes similar provision for combining child death review partner areas as Clause 21 does for safeguarding partners.

**Clause 28** states that child death review partners for a local authority area in England must have regard to any guidance given by the Secretary of State in connection with child death reviews and associated functions. It also defines who are child death review partners.

The above clauses insert new sections 16M to 16Q into the *Children Act 2004*.

**Clause 29** amends section 66 of the *Children Act 2004* so that regulations made under section 16B of the 2004 Act (see clause 12 above) or section 16E (see clause 16 above) are to be made by the affirmative procedure. Regulations made under section 16F (see clause

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<sup>146</sup> [Bill 99-EN](#), pp5 and 19-23, paras 6 and 107-147

16 above) are also to be made by the affirmative procedure, if made alongside regulations made under section 16B.

**Clause 30** will delete the existing sections in the *Children Act 2004* relating to LSCBs.<sup>147</sup>

### 3.3 Background on LSCBs and SCRs

#### Rationale for creating LSCBs

Previously, local authorities had Area Child Protection Committees (ACPCs) which were a “multi-agency forum for agreeing how the different services and professional groups should cooperate to safeguard children in that area, and for making sure that arrangements work effectively to bring about good outcomes for children”.<sup>148</sup>

Although each local authority should have an ACPC, there was no statutory duty to do so.

Local Safeguarding Children Boards were a response to two key reports in the early 2000s:

- In October 2002, the Department of Health published a Joint Chief Inspectors' Report,<sup>149</sup> *Safeguarding Children*, in which the inspectors found a number of failings with the ACPCs they inspected, in particular that “ACPCs did not command the authority to require local agencies to report on how they undertook their safeguarding duties”. The inspectors recommended that the Government should “Review the current arrangements for Area Child Protection Committees to determine whether they should be established on a statutory basis to ensure adequate accountability, authority and funding”.<sup>150</sup>
- Following the death of Victoria Climbié, murdered by her private foster carers following a long period of ill-treatment and cruelty, Lord Laming's investigation found that ACPCs had “generally become unwieldy, bureaucratic and with limited impact on front-line services ... ACPC arrangements had become removed from day-to-day practice and lack any statutory powers”.<sup>151</sup> Lord Laming recommended the establishment of a “Management Board for Services to Children and Families”.

Lord Laming explained:

In each local authority, the chief executive should chair a Management Board for Services to Children and Families, made

<sup>147</sup> [Bill 99-EN](#), pp23–25, paras 148–172

<sup>148</sup> Department for Education and Skills, [ACPC roles and responsibilities](#), August 2004 [taken from WayBackMachine website]

<sup>149</sup> The Joint Inspectors were: Chief Inspector of Social Services; Director for Health Improvement, Commission for Health Improvement; Her Majesty's Chief Inspector of Constabulary; Her Majesty's Chief Inspector of the Crown Prosecution Service; Her Majesty's Chief Inspector of the Magistrates' Courts Service; Her Majesty's Chief Inspector of Schools; Her Majesty's Chief Inspector of Prisons; Her Majesty's Chief Inspector of Probation

<sup>150</sup> Department of Health, [Safeguarding children: a Joint Chief Inspectors report on arrangements to safeguard children](#), October 2002, pp5 and 8, paras 1.26, 1.29 and 2.4

<sup>151</sup> Department of Health, [The Victoria Climbié Inquiry – Report of an Inquiry by Lord Laming](#), January 2003, p7, para 1.33 and p362, para 17.94

up of chief officers (or very senior officers) from the police, social services, relevant health services, education, housing and the probation service. The Management Board for Services to Children and Families will be required to appoint a director of children and family services at local level. This person will be responsible for ensuring service delivery, including the effectiveness of local inter-agency working, which must also include working with voluntary and private agencies. Each board must also establish a local forum to secure the involvement of voluntary and private agencies, service users, including children, and other contributors as appropriate. Special arrangements will have to be made in London, to take account of the fact there are 33 London authorities.<sup>152</sup>

Following both Lord Laming's report and the Joint Chief Inspector's report, the then Government published a Green Paper on child protection entitled *Every Child Matters* in September 2003. The Green Paper announced the proposal for statutory LSCBs to replace ACPCs,<sup>153</sup> and the subsequent *Every Child Matters: Next Steps* paper, published in 2004, noted that "consultees welcomed the proposal", and provided further details of the policy:

The [Children] Bill requires each Local Authority to establish a statutory Local Safeguarding Children Board, the purpose of which is to co-ordinate and ensure the effectiveness of local arrangements and services to safeguard children, including services provided by individual agencies. This will mean analysing current arrangements, identifying any improvements needed and agreeing how agencies will work together to achieve these improvements, including commissioning any services through the Children's Trust and identifying training needs. Boards will both inform and be informed by the wider discussions with local partners on children's well-being. Their work will be underpinned by the requirements on individual agencies to have regard to safeguarding and promoting the welfare of children.

The core Board partners prescribed by the Bill are: local authorities, NHS bodies, the Police, local probation boards, the Connexions Service, local prisons, Young Offender Institutions, the Children and Family Court Advisory and Support Service (CAFCASS) and district councils, where relevant.<sup>154</sup>

The *Children Act 2004* provided the legislative basis for LSCBs, and the provisions came into force on 1 March 2005.

As the revised version of *Working Together to Safeguard Children*, published in 2006, stated: "The LSCB does not have a power to direct other organisations". Rather, while its "role in co-ordinating and ensuring the effectiveness of local individuals' and organisations' work to safeguard and promote the welfare of children, it is not accountable for their operational work".<sup>155</sup>

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<sup>152</sup> As above, p1, para 1.39

<sup>153</sup> HM Government, *Every child matters*, Cm 5860, September 2003, p74, para 5.25

<sup>154</sup> Department for Education, *Every Child Matters: Next Steps*, 2004, pp15–16, para 2.15

<sup>155</sup> HM Government, *Working Together to Safeguard Children*, 2006, p77, para 3.16

## Reviews

### Lord Laming's review (March 2009) and Government response

Following the death of Peter Connelly (known as "Baby P") in Haringey, in November 2008 the then Education Secretary, Ed Balls, told the House that, following the establishment of LSCBs, "in order to ensure that these reforms are being implemented systematically" he had asked Lord Laming to "prepare an independent report of progress being made, identifying any barriers to effective, consistent implementation, and recommending whether additional action is needed to overcome them".<sup>156</sup>

Lord Laming's report was published in March 2009, and found that the "first five years [of LSCBs] have seen sound progress in legislative and structural terms", but also noted that

Despite considerable progress in interagency working, often driven by Local Safeguarding Children Boards and multi-agency teams who strive to help children and young people, there remain significant problems in the day-to-day reality of working across organisational boundaries and cultures, sharing information to protect children and a lack of feedback when professionals raise concerns about a child. Joint working between children's social workers, youth workers, schools, early years, police and health too often depends on the commitment of individual staff and sometimes this happens despite, rather than because of, the organisational arrangements. This must be addressed by senior management in every service.

Undermining many attempts to protect children and young people and improve their well-being effectively is the low quality of training and support given to often over-stretched frontline staff across social care, health and police [...]

The issues outlined above have not had the priority they deserve over the last five years. In part, this may be due to the lack of effective challenge and support for improvement of safeguarding and child protection services across agencies". The inspection process, in particular the loss of the development function from the inspection regime, was noted.<sup>157</sup>

In terms of SCRs, Lord Laming said that the "purpose and processes of SCRs can be further developed to strengthen their impact on keeping children safe from harm". In particular, he said that:

the current remit of SCRs as set out in Working Together to Safeguard Children is too narrow and is at risk of not being sufficiently explicit about the role of SCRs in learning lessons for individual organisations to allow a proper understanding of how children can be better protected from harm to be developed.<sup>158</sup>

Lord Laming made 58 recommendations, including revising the *Working Together* document "to set out the elements of high quality supervision focused on case planning, constructive challenge and professional development" and "to set out clear expectations at all points where

<sup>156</sup> [HC Deb 12 November 2008 cc57-58WS](#)

<sup>157</sup> Lord Laming, *The Protection of Children in England: A Progress Report*, March 2009, pp9-10, para 1.3 and pp10-11, paras 1.6-1.8

<sup>158</sup> Lord Laming, *The Protection of Children in England: A Progress Report*, March 2009, pp63-64, para 6.7

concerns about a child's safety are received", as well as to strengthen inter-agency working and how Serious Case Reviews are handled. He also sought improvements in the social care workforce, and improvements in the inspection regimes of those providing frontline services to children, including that "Ofsted should focus its evaluation of Serious Case Reviews on the depth of the learning a review has provided and the quality of recommendations it has made to protect children".<sup>159</sup>

When the report was published, Ed Balls told the House that the Government "will accept all Lord Laming's recommendations in full; we are taking immediate action from today to implement them; and we will set out our detailed response to all 58 recommendations before the end of next month".<sup>160</sup>

In May 2009, the Government published an action plan to address the points raised in Lord Laming's report, which included that:

- "Local Safeguarding Children Boards should include membership from the senior decision makers from all safeguarding partners";
- "the LSCB should publish an annual report on the effectiveness of arrangements locally, and the contribution and activities of each local partner, for keeping children safe, as recommended in Lord Laming's report";
- "a presumption that the LSCB is chaired by someone independent of the local agencies so that the LSCB can exercise its local challenge function effectively";
- a revised version of *Working Together to Safeguard Children* would include Lord Laming's recommendations on strengthening policy and practice in relation to Serious Case Reviews.<sup>161</sup>

### **Local Government Association review**

In April 2015, the Local Government Association (LGA) published a report it had commissioned, entitled *A review of current arrangements for the operation of Local Safeguarding Children Boards*. The report found that "overall partners believed their LSCBs worked very well", although the following points were noted by the report's authors:

- there were "divided views amongst Chairs on the extent to which LSCBs had the necessary statutory powers to hold partners to account or sufficient authority in relation to Chief Executives";
- "There was clear evidence of good partnership working and a commitment to sustaining and building relationships ... but the tension for some members between their role on the Board and as a representative of their own agencies emerged ... This tension may be unavoidable and possibly reflects a more fundamental issue that links with how LSCBs are constituted";

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<sup>159</sup> As above, pp85–92

<sup>160</sup> [HC Deb 12 March 2009 c463](#)

<sup>161</sup> Department for Children, Schools and Families, [The protection of children in England: action plan – The Government's response to Lord Laming](#), Cm 7589, May 2009, pp14–15, paras 46–47 and p6, para 15



- “resource pressures were a consistent theme throughout the research. LSCBs rely heavily on local authorities to fund their activities”;
- “the research strongly suggests that, put simply, LSCBs have not been resourced to fulfil a role that means they can be held to account for any failure in the system. That would require powers to scrutinise and intervene at a level that was not envisaged when they were established”;
- “while there has been more emphasis placed on holding partner agencies to account it is not necessarily clear how they will be able to do so, particularly with the greater level of decentralisation of services such as education and the considerable flux in health and social care agencies”;
- “there were examples of excellent and committed partnership working, of strong leadership and of local partners doing their level best to mitigate the impact of reduced resources”;

In terms of whether LSCB’s were “fit for purpose”, the researchers concluded that:

The research offers no evidence to suggest that a radical change in the current model will yield better results – albeit this was not explored in detail – and in fact, the more pressing issue seems to be that there is not a universally agreed and realistic set of results for LSCBs to achieve. There is a fear, expressed by a number of participants in this research, that a dominant discourse may prevail that ‘there is a problem with LSCBs’ (with no universal agreement as to precisely what the problem and what its causes are) and that this will be addressed through structural/procedural reform activity. It seems imperative that any efforts to support improvements in effectiveness acknowledge factors beyond simply the form LSCBs take. Broader considerations include a) the widely held view that the expectations on LSCBs have increased significantly without accompanying additional powers and resource b) the context of reduced resources and subsequent pressure on agencies in relation to safeguarding and c) the critically influential role of human relationships and personalities.<sup>162</sup>

On SCRs, the report found that “In just under a fifth of LSCBs, Chairs consider that SCRs are having either very minimal or no impact on their operations. In over a third of LSCBs, SCRs were considered to be having a limited impact and in over two-fifths of LSCBs a considerable impact. Not surprisingly those with the most SCRs were most likely to say they were having a more significant impact”.<sup>163</sup>

The report found that “participants at all stages of the research raised the significant resource challenges (financial and personnel time) associated with conducting SCRs, and a not insignificant number questioned whether they were even useful at all”.<sup>164</sup>

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<sup>162</sup> Local Government Association, [A review of current arrangements for the operation of Local Safeguarding Children Boards](#), April 2015, p143

<sup>163</sup> Local Government Association, [A review of current arrangements for the operation of Local Safeguarding Children Boards](#), April 2015, p30

<sup>164</sup> Local Government Association, [A review of current arrangements for the operation of Local Safeguarding Children Boards](#), April 2015, p141

### 3.4 The current remit of LSCBs

Section 14 of the *Children Act 2004* states that the objective of a LSCB is:

- a) to co-ordinate what is done by each person or body represented on the Board ... for the purposes of safeguarding and promoting the welfare of children in the area of the authority by which it is established; and
- b) to ensure the effectiveness of what is done by each such person or body for those purposes

The current, March 2015, statutory guidance, [\*Working together to safeguard children\*](#), notes that regulation 5 of the *Local Safeguarding Children Boards Regulations 2006* "sets out that the functions of the LSCB, in relation to the above objectives under section 14 of the Children Act 2004", namely:

- a) developing policies and procedures for safeguarding and promoting the welfare of children in the area of the authority, including policies and procedures in relation to:
  - (i) the action to be taken where there are concerns about a child's safety or welfare, including thresholds for intervention;
  - (ii) training of persons who work with children or in services affecting the safety and welfare of children;
  - (iii) recruitment and supervision of persons who work with children;
  - (iv) investigation of allegations concerning persons who work with children;
  - (v) safety and welfare of children who are privately fostered;
  - (vi) cooperation with neighbouring children's services authorities and their Board partners;
- b) communicating to persons and bodies in the area of the authority the need to safeguard and promote the welfare of children, raising their awareness of how this can best be done and encouraging them to do so;
- c) monitoring and evaluating the effectiveness of what is done by the authority and their Board partners individually and collectively to safeguard and promote the welfare of children and advising them on ways to improve;
- d) participating in the planning of services for children in the area of the authority; and
- e) undertaking reviews of serious cases and advising the authority and their Board partners on lessons to be learned.

In addition, regulation 5(3) provides that an LSCB may also engage in any other activity that facilitates, or is conducive to, the achievement of its objectives.<sup>165</sup>

Section 13 of the *Children Act 2004* as amended “sets out that an LSCB must include at least one representative of the local authority and each of the other Board partners set out below (although two or more Board partners may be represented by the same person)”. The *Working Together* document notes that:

Board partners who must be included in the LSCB are:

- district councils in local government areas which have them;
- the chief officer of police;
- the National Probation Service and Community Rehabilitation Companies;
- the Youth Offending Team;
- NHS England and clinical commissioning groups;
- NHS Trusts and NHS Foundation Trusts all or most of whose hospitals, establishments and facilities are situated in the local authority area;
- Cafcass;
- the governor or director of any secure training centre in the area of the authority;
- and
- the governor or director of any prison in the area of the authority which ordinarily detains children.

In addition:

the local authority must take reasonable steps to ensure that the LSCB includes two lay members representing the local community [and] representatives of relevant persons and bodies of such descriptions as may be prescribed, namely:

- the governing body of a maintained school;
- the proprietor of a non-maintained special school;
- the proprietor of a city technology college, a city college for the technology of the arts or an academy; and
- the governing body of a further education institution the main site of which is situated in the authority’s area.<sup>166</sup>

### 3.5 The role of the Serious Case Review Panel

The Panel came into operation in July 2013, in order to:

- bring rigorous independent scrutiny to the system
- help LSCBs apply the criteria for initiating SCRs when a child dies or is seriously harmed and there are signs of abuse and neglect

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<sup>165</sup> HM Government, [Working together to safeguard children](#), March 2015, p66

<sup>166</sup> HM Government, [Working together to safeguard children](#), March 2015, p66

- advise - and where appropriate challenge - LSCBs when they decide not to initiate a SCR or intend not to publish a report.

However, the role of the Panel is limited: "The panel cannot take enforcement action. Its role will be an advisory one. However, we expect LSCBs to have due regard to its advice".<sup>167</sup>

### 3.6 The Wood review and Government response

On 14 December 2015, the then Prime Minister, David Cameron, announced in a press release entitled "We will not stand by – failing children's services will be taken over" that, among other measures, that there would be an "urgent review of Local Safeguarding Children Boards and centralisation of Serious Case Reviews to learn lessons from serious incidents".<sup>168</sup>

The review was undertaken by Alan Wood CBE, the Corporate Director of Children's Services, London Borough of Hackney, former President of the Association of Directors of Children's Services (ADCS), and the author of Government-commissioned reviews of children social care.<sup>169</sup>

His appointment took effect from 1 January to 31 March 2016, with the aim of the review being:

To undertake a fundamental review of the role and function of Local Safeguarding Children Boards (LSCBs) within the context of local strategic multi-agency working, including the child death review process, and to consider how the intended centralisation of serious case reviews (SCRs) will work effectively at local level.<sup>170</sup>

His report was published in March 2016, drawing upon the findings of 70 meetings, conversations and events, and over 600 sets of comments and other submissions in response to a questionnaire, as well as a range of research findings on LSCBs and SCR.<sup>171</sup>

### Wood Review

#### Local Safeguarding Children Boards

The review found that LSCBs, "for a variety of reasons, are not sufficiently effective".<sup>172</sup> This viewpoint was supported by respondents to the review's survey about the coordination and effectiveness roles of LSCBs: "62.5% said they felt the coordination role was effective and 52.8% said they ensure the effectiveness of the work", which Mr Wood described as "a low level of support".<sup>173</sup>

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<sup>167</sup> GOV.UK, [Serious case review panel established](#), Press release, 6 June 2013

<sup>168</sup> GOV.UK, [PM: We will not stand by – failing children's services will be taken over](#), Press release, 14 December 2015

<sup>169</sup> GOV.UK, [Alan Wood CBE](#), webpage [taken on 16 August 2016]

<sup>170</sup> Wood Review, [Review of the role and functions of Local Safeguarding Children Boards](#), March 2016, pp69 and 70

<sup>171</sup> Wood Review, [Review of the role and functions of Local Safeguarding Children Boards](#), March 2016, p5, paras 10–11

<sup>172</sup> As above, p5, para 13

<sup>173</sup> As above, p6, para 14

The review found that LSCBs were not suitable for the task in hand; they had been established shortly after the death of Victoria Climbié and Mr Wood found that LSCBs had limited impact when dealing with matters beyond investigations into domestic abuse:

I think there is merit in the suggestion that LSCBs were essentially predicated on interfamilial child abuse and are not in a good position to deal effectively with a remit to coordinate services and ensure their effectiveness across a spectrum encompassing child protection, safeguarding and wellbeing. They have neither the capacity nor resources to do so. These three phrases have become confused and are confusing. Some use them interchangeably; others draw a clear distinction between each. This needs to be clarified so that protecting children is the focus of multi-agency arrangements.<sup>174</sup>

Among his criticisms of LSCBs, Mr Wood noted:

- “It is clear that the duty to cooperate has not been sufficient in ensuring the coherent and unified voice necessary to ensure multi-agency arrangements are consistently effective”;
- “A key finding in this review is that the duty to cooperate is not a sufficient vehicle to bring about effective collaboration between the key agencies of health, the police and local government”;
- “Leadership is not effective enough in delivering multi-agency arrangements”;
- “we must move away from the highly prescribed model we have for delivering multi-agency arrangements ... We should be asking for outcomes for children and young people to be improved, not how they are organised”
- “Too much of practice leaders’ time is taken up in servicing the architecture of multi-agency arrangements”, among them LSCBs.

The review called for the existing statutory arrangements for LSCBs to be replaced, and the introduction of a new statutory framework for multi-agency arrangements for child protection. In particular, the new framework should “require the three key agencies, namely health, police and local authorities, in an area they determine, to design multi-agency arrangements for protecting children”. In addition,

Local areas/regions would need to establish a plan which would describe how services would:

- Meet the new statutory framework;
- be coordinated;
- be led by senior officials;
- be evaluated for their effectiveness;
- involve a role for independent scrutiny;
- engage with children and young people; and
- be held to account.<sup>175</sup>

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<sup>174</sup> As above, p7, para 18

<sup>175</sup> Wood Review, [Review of the role and functions of Local Safeguarding Children Boards](#), March 2016, p25, recommendations 1–3

### Serious Case Reviews

The review called for “fundamental change” in respect of SCRs, arguing that:

We do not have a national learning framework for considering the lessons of the tragic events that take a child’s life or seriously harms them. Despite guidance to the contrary, the model of serious case reviews has not been able to overcome the suspicion that its main purpose is to find someone to blame. Although there has been some improvement in the quality of some reviews the general picture is not good enough and the lessons to be learned tend to be predictable, banal and repetitive.<sup>176</sup>

Mr Wood said that the Government should “should discontinue Serious Case Reviews”, and instead “an independent body at national level to oversee a new national learning framework for inquiries into child deaths and cases where children have experienced serious harm”.

### Child Death Overview Panels

Under regulation 6 of *the Local Safeguarding Children Boards Regulations 2006*,<sup>177</sup> LSCBs have, since 1 April 2008, been responsible for:

- a) collecting and analysing information about each death with a view to identifying—
  - (i) any case giving rise to the need for a review mentioned in regulation 5(1)(e);
  - (ii) any matters of concern affecting the safety and welfare of children in the area of the authority; and
  - (iii) any wider public health or safety concerns arising from a particular death or from a pattern of deaths in that area; and
- b) putting in place procedures for ensuring that there is a co-ordinated response by the authority, their Board partners and other relevant persons to an unexpected death.

The review noted that:

Over 80% of child deaths have medical or public health causation. For babies and infants the cause is often related to congenital factors and in the early teenage/adolescent age range the causation is related often to injury. Clinicians estimate that only 4% of child deaths relate to safeguarding or require an SCR to be carried out.

Mr Wood said that “Given the very small number of child deaths that relate to child protection and safeguarding I do not think it is axiomatic that CDOPs should sit within the framework of multi-agency arrangements for child protection and safeguarding”, adding “In my view, the Department for Education is not in the best position to provide the necessary support required for a specialist and technical oversight of this process”. He recommended that “the national sponsor

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<sup>176</sup> Wood Review, *Review of the role and functions of Local Safeguarding Children Boards*, March 2016, p8, paras 26-27

<sup>177</sup> SI 2006/90

for CDOPs should move from the Department for Education to the Department of Health".<sup>178</sup>

## Government response

### Local Safeguarding Children Boards

In its May 2016 response the Government said that it agreed with Mr Wood's analysis, and that "Current arrangements are inflexible and too often ineffective. Meetings take place involving large numbers of people, but decision-making leading to effective action on the ground can be all too often lacking". Instead, it proposed:

a stronger but more flexible statutory framework that will support local partners to work together more effectively to protect and safeguard children and young people, embedding improved multi-agency behaviours and practices. This framework will set out clear requirements for the key local partners, while allowing them freedom to determine how they organise themselves to meet those requirements and improve outcomes for children locally.<sup>179</sup>

In particular, the DfE said that it would bring forward legislation to underpin the new arrangements, whose features would include the following:

- Place a new requirement on three key partners, namely local authorities, the police and the health service, to make arrangements for working together in a local area.
- place an expectation on schools and other relevant agencies involved in the protection of children, to co-operate with the new multi-agency arrangements.
- Remove the requirement for local areas to have LSCBs with set memberships, often leading to large and unwieldy boards.
- In cases where local arrangements do not work effectively, we will provide for the Secretary of State to have power to intervene in situations where the three key agencies cannot reach an agreement on how they will work together, or where arrangements are otherwise seriously inadequate.<sup>180</sup>

### Serious Case Reviews

The Government said that it agreed to the need for "fundamental change, bringing to an end the existing system of serious case reviews, and replacing it with a new national learning framework for inquiries into child deaths and cases where children have experienced serious harm". The DfE said that it would "replace the current system of SCRs

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<sup>178</sup> Wood Review, [Review of the role and functions of Local Safeguarding Children Boards](#), March 2016, pp57 and 59, paras 177, 185, 187 and recommendation 30

<sup>179</sup> Department for Education, [Review of the role and functions of Local Safeguarding Children Boards – The government's response to Alan Wood CBE](#), May 2016, p5, para 7

<sup>180</sup> Department for Education, [Review of the role and functions of Local Safeguarding Children Boards – The government's response to Alan Wood CBE](#), May 2016, pp5–6, para 7



and miscellaneous local reviews with a system of national and local reviews” and “establish an independent National Panel”.<sup>181</sup>

### **Child Death Overview Panels**

The DfE said that it agreed that national oversight of CDOPs should be transferred to the Department of Health, and would put in place arrangements to do this, but would ensure “that the keen focus on distilling and embedding learning is maintained within the necessary child protection agencies”.<sup>182</sup>

## **3.7 Response to the Government’s proposals**

David Jones, the chair of the Association of Independent Local Safeguarding Children Board Chairs (AILC), said:

‘Today’s government announcement proposes the biggest shake up in safeguarding children arrangements since the 1970s’ ...  
‘The changes in local government, including devolution, and other changes in the children’s services structures, means that new structural arrangements need to be considered.

‘Such fundamental change in multi agency safeguarding partnerships inevitably presents significant risks and opportunities’ ... ‘The 100 Independent LSCB Chairs include some of the most experienced child protection professionals in the country. We published our view of the essential elements of effective child protection systems. We will scrutinise the government’s proposals to see whether they match up to our exacting specification.

‘The big challenge for government and for local partnerships will be sustaining an essential focus on today’s child protection challenges whilst sorting out tomorrow’s structures. This will be a 2 or 3 year change process with all the inherent risks that implies. Independent LSCB Chairs will do our best to sustain essential arrangements whilst supporting transition’.<sup>183</sup>

## **3.8 Establishment of a new framework of child protection**

### **Delegated Powers and Regulatory Reform Committee reports**

The Committee considered elements of the Bill relating to child protection in its First and Second reports of the 2016–17 parliamentary session. In both reports it found instances of excessive reliance on secondary legislation by government.

In its First Report, published on 17 June 2016, the Committee noted that under Clause 12 the Child Safeguarding Practice Review Panel had to carry out its functions “in accordance with arrangements made by the Secretary of State”, and the Bill included a “non-exhaustive list of

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<sup>181</sup> Department for Education, [Review of the role and functions of Local Safeguarding Children Boards – The government’s response to Alan Wood CBE](#), May 2016, p7, paras 8–10

<sup>182</sup> Department for Education, [Review of the role and functions of Local Safeguarding Children Boards – The government’s response to Alan Wood CBE](#), May 2016, p8, para 15

<sup>183</sup> Milton Keynes Safeguarding Children Board, [Association of Independent LSCB Chairs](#), 13 June 2016

the matters which the Secretary of State may include in the arrangements”.

The Committee said that “the delegation to the Secretary of State of the power to determine such arrangements constitutes the delegation of a legislative power”, and that the proposed functions of the Panel “are expressed in very general terms”, and therefore recommended that “the arrangements made by the Secretary of State under section 16B(1) should be contained in a statutory instrument subject to the affirmative procedure”. The Committee also called for the panel’s guidance to be issued by the Secretary of State to be subject to the negative procedure.<sup>184</sup>

In terms of the clause concerning “events to be notified to the Panel”, the Committee said that “they are all cases where a child suffers death or serious harm, including the death of a child in a ‘regulated setting’”, but noted that the term “regulated setting” “is to have the meaning given by the Secretary of State in regulations”.

The Committee said that:

The definition of “regulated setting” is fundamental to determining the scope of a local authority’s duty to provide information about cases falling within section 16C(1)(d). Given this context, we do not consider the Department’s reasons are sufficient to justify leaving the definition wholly to regulations.

[...]

In our view, the definition should be on the face of the Bill, combined with a regulation making power which allows for modifications to take account of future changes.

It added that:

In our view, this is a wide power which is also in the nature of a Henry VIII power since it directly affects the scope of a duty which is imposed by primary legislation. As such we consider it should be subject to the affirmative procedure even if changed in accordance with the recommendation ... above.<sup>185</sup>

In its Second Report, it considered the amendments tabled by the Government at Committee Stage to legislate for local arrangements for safeguarding and promoting the welfare of children – to replace LSCBs – and child death reviews.

The safeguarding partners – the local authority, NHS Clinical Commission Group(s) (CCG) and police – may invite to the panel any “relevant agencies” they consider appropriate. The Committee noted that “the Bill does not define who is a “relevant agency” for these purposes. Instead, the definition is to be set out in regulations subject to the negative procedure”.

The Committee noted that:

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<sup>184</sup> Delegated Powers and Regulatory Reform Committee, *First Report*, 2016–17 HL 13, 17 June 2016, pp7–8, paras 34–39

<sup>185</sup> Delegated Powers and Regulatory Reform Committee, *First Report*, 2016–17 HL 13, 17 June 2016, pp8–9, paras 40–44

The power conferred by new section 16E(3) is very wide: the only limitation on the bodies which may be prescribed as a “relevant agency” is that they must be bodies which exercise functions in relation to children in a local authority area. It appears, therefore, that “relevant agency” could include both public and private sector organisations (such as independent schools and privately run playgroups).

The effect of a body being a relevant agency is potentially significant: not only will it allow the body to be made subject to a statutory duty to participate in the arrangements determined by the safeguarding partners, but will also expose the body in those circumstances to what are so far unspecified enforcement measures in the event of non-compliance.

and concluded:

Accordingly, we consider that the delegated power conferred by section 16E(3) of the 2004 Act is inappropriate. In our view, the bodies which are relevant agencies for the purposes of section 16E of the 2004 Act should be specified on the face of the Bill; and, to the extent that it is necessary to have a regulation making power to modify the list of bodies which are relevant agencies, we consider that that power should be subject to the affirmative procedure.

In addition, a new statutory duty was proposed in Clause 17 on the safeguarding partners and the relevant agencies within a local authority area to act in accordance with the arrangements developed by the safeguarding partners. The Secretary of State could make regulations for the purpose of enabling that duty to be enforced against a relevant agency.

The Committee described this, again, as a “very wide” power, and considered it, also, to be “inappropriate”, adding “in our view, the measures which are to be available to enforce the statutory duty to act in accordance with the safeguarding partners’ arrangements under section 16E should be specified on the face of the Bill”.<sup>186</sup>

## Lords consideration

### Second Reading

The Bill included four clauses relating to the creation of a national Child Safeguarding Practice Review Panel. The Minister, Lord Nash, said that the panel would “oversee the review of the most serious and complex cases and, with the support of the planned ‘What Works’ centre for children’s social care, make sure that the lessons from them are no longer locked at the local level, but provide a stronger national evidence base to inform practice across the country”. The Government, he said, estimated that “the number of cases to be reviewed by the panel will be around 20 to 30 a year, with the remainder being reviewed, as at present, at local level”.<sup>187</sup>

Baroness Pinnock said that the national panel “has much to recommend it”,<sup>188</sup> although Baroness Meacher, a cross-bencher, said she was

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<sup>186</sup> Delegated Powers and Regulatory Reform Committee, *Second Report*, 2016–17 HL 21, 8 July 2016, pp1–2, paras 1–9

<sup>187</sup> [HL Deb 14 June 2016 c1115](#)

<sup>188</sup> [HL Deb 14 June 2016 c1123](#)

“deeply worried about the possible implications of the proposals” and believed that the panel’s only interest should be “lessons that can be learned across the country, not an individual person’s activity”.<sup>189</sup>

In terms of the circumstances where a national review might be called for, the Minister replied that he “would like to reflect on this more”.<sup>190</sup>

The Minister noted the Wood Review (see above), saying that its “overall conclusion is that the current system of local safeguarding children boards is too inflexible, too variable and too frequently ineffective”, and added that “Ofsted reviews show that of the 94 LSCBs which have been reviewed, nearly 70% were rated as either inadequate or requiring improvement”.

The Minister said that the Government was therefore “proposing to introduce a new, more robust statutory framework around multi-agency working that places a greater onus on the three main local partners involved in children’s safeguarding: the local authority, the police and health”.

At that stage, the Bill did not include the necessary clauses to implement this, although the Minister said that “we believe that these changes need to happen quickly and we will therefore be tabling government amendments in advance of the Committee Stage so that the House can consider them at the earliest opportunity”.<sup>191</sup>

### **Committee Stage**

The Government introduced new Clauses 15 to 28, concerning the replacement of LSCBs, SCRs and child death reviews, which amended the *Children Act 2004*. Noting the Wood Review, the Minister said that New Clause 15 “requires the safeguarding partners, namely the local authority, chief officer of police and clinical commissioning groups to work together”, noting that “this provision would place upon these three key safeguarding partners an equal responsibility to work together”.

In addition, the new clause will “allow the Secretary of State to specify in regulations the agencies which exercise functions in relation to children. This will, of course, include relevant agencies such as schools, youth offending and justice agencies and a range of others which exercise functions in relation to the welfare of children ... [although] local areas would decide which agencies to involve and in what ways, rather than having a list imposed on them by central government”. The Minister said that “we intend that statutory guidance will specify that the safeguarding partners will be expected to consult locally before making the arrangements”.

New clause 16 “sets out the requirement on safeguarding partners within a local authority area to carry out local child safeguarding practice reviews”, the Minister said. He added that “the primary focus of such reviews will be on how practice by local authorities or other

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<sup>189</sup> [HL Deb 14 June 2016 c1144](#)

<sup>190</sup> [HL Deb 14 June 2016 c1205](#)

<sup>191</sup> [HL Deb 14 June 2016 c1115](#)

local bodies can be improved as a result of the case", stating "I cannot emphasise enough that reviews will not be about blame or public censure of individuals".

He said that "if the safeguarding partners identify a serious child safeguarding case which they think may raise issues that are complex or of national importance, or where it becomes apparent that a case raises such issues, they will be free to refer it to the Child Safeguarding Practice Review Panel", and added:

I offer my reassurance that this is not about removing local responsibility for these cases, nor is it about national reviews being more important than local reviews. Some cases that are particularly complex or that raise issues of national importance will benefit from being managed centrally. Where the panel decides to review a case, practice improvement in the context of any local learning will remain a key aim of the review.

The new clause included regulation making powers, including arrangements regarding the appointment or removal of a reviewer. The Minister said that "while such arrangements are yet to be finalised, it is expected that a training and accreditation process will be established to provide a skilled cohort of reviewers", and that "the safeguarding partners will be responsible for selecting the reviewer or reviewers for each case they commission, either from a list provided by the Secretary of State or through other arrangements".

He explained that new clause 17 requires the safeguarding partners to publish details of the multiagency working arrangements, including independent scrutiny of their effectiveness, and new clause 18 enables the partners to request information in pursuance of their statutory functions; Lord Nash noted that "the Wood review highlighted the critical importance of effective and speedy sharing of information and data in relation to protecting and safeguarding children. We also know that failure to share information all too often features as a key factor in serious case reviews. This clause will underline the importance of sharing relevant information, backed up with the power of enforcement".

New clause 19 "enables the safeguarding partners and relevant agencies to make payments to support the joint working arrangements which they are establishing", and new clause 20 allows flexibility in the area covered by a safeguarding partner area. The Minister noted that the "geographical boundaries of local authorities, police authorities and clinical commissioning groups are often very different. The local authority boundary will be the basis for arrangements but local areas may determine what is best for their area, taking into account the three key safeguarding partners' considerations".

New clause 21 allows the Secretary of State to issue guidance to safeguarding partners and relevant agencies, including the "circumstances in which it may be appropriate for a serious child

safeguarding case to be reviewed locally". New clause 22 concerned interpretation.<sup>192</sup>

Baroness Pinnock, for the Liberal Democrats, asked whether the new panels could include local elected representatives, whether representatives from relevant agencies would be required to attend or whether they would just be asked to attend, raised concerns about the geographical overlaps of local authority, police and CCG areas, and asked how learning from reviews would take place.<sup>193</sup>

Lord Hunt, for the Opposition, also sought clarification on the issue of challenge and geographical overlaps. He also asked whether the DfE would monitor which relevant agencies were being to join the panels, and whether the Secretary of State's guidance would be statutory.<sup>194</sup>

The Minister provided the following response:

On the points raised by the noble Baroness, Lady Pinnock, local arrangements may include elected representatives but this is a matter for local determination. On her second point, Amendment 113 gives the safeguarding partners flexibility to determine who the other relevant agencies are but, having determined that, those relevant agencies have to co-operate.

On the publication of annual reports, my answer says that this enables public scrutiny as it is transparent. As for the point made by the noble Lord, Lord Hunt, about how local areas organise themselves—the noble Baroness also asked about flexibility on the areas to align operational reach—I can confirm that the local authority area will be the key area and accountability will be to the local authority. It is designed to ensure flexibility within that structure but, to answer the noble Lord's point, there is no hidden agenda. We are concerned here purely with the matter of improving child safeguarding.

The noble Baroness asked about monitoring progress and reviews. I already covered some of that in my answers about the What Works centre for children's social care. The duty remains for local arrangements to report on their practice and action taken in response. The second question asked by the noble Lord, Lord Hunt, was who the safeguarding partner will designate as a relevant agency so that it can keep track of what is going on. I will certainly look at that. His third question was about Amendment 119 and whether the guidance will be statutory. It will.<sup>195</sup>

The amendments were agreed to.

Government new clauses 23 to 27 concerned child death reviews, to be conducted by the child death review partners, namely the local authority and any NHS Clinical Commissioning Group (CCG) falling within the local authority area.

As Baroness Evans of Bowes Park noted, such a review is intended to "identify issues that are relevant to the welfare of children in the area or to public health and safety and, in doing so, to consider whether it

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<sup>192</sup> [GC Deb 11 July 2016 cc16–20](#)

<sup>193</sup> [GC Deb 11 July 2016 cc20–22](#)

<sup>194</sup> [GC Deb 11 July 2016 c22](#)

<sup>195</sup> [GC Deb 11 July 2016 cc23–24](#)

would be appropriate for anyone to take action in relation to any matters identified”.

New clause 24 would “enable the child death review partners to request information and enforce compliance”, while new clause 25 would “allow child death review partners to agree to make payments to support the joint working arrangements which they are establishing for the reviews”.

New clause 26 would “require child death review partners to have regard to any statutory guidance issued by the Secretary of State in regard to their functions”.

Baroness Evans explained:

These new clauses bring the two key child death review partners together and place upon them equal responsibility to work together. They will enable health partners to continue to support the analysis of information on health-related child deaths at local and national level. Hospitals of course routinely analyse the data on child deaths. Local authorities need to be partners to ensure that factors relating to public health and safeguarding are similarly identified. This will also allow local authorities to promote learning and dissemination within their local area. For these reasons, the Government believe it is imperative that child death reviews remain on a statutory footing to secure the best outcomes for all children.<sup>196</sup>

Baroness Hughes of Stretford said the clauses were “generally welcome”, although asked “what the review partners will be required to publish”. Baroness Evans replied that “the child death review partners will be required to publish information on what more local authorities and CCGs can do to prevent deaths, including analysis and data”.<sup>197</sup>

### **Report Stage**

The Government tabled amendments to address the points raised by the Delegated Powers and Regulatory Reform Committee, specifically:

- in clause 12, requiring the Secretary of State to make regulations, rather than arrangements, in relation to the functions of the Child Safeguarding Practice Review Panel;
- clause 15 would continue not to list the relevant agencies because “in order to allow for arrangements to be fully tailored to the specific needs and circumstances of each local area, we need safeguarding partners to know that they have flexibility and discretion”. The Minister did say that “the regulations made by the Secretary of State that specify the relevant agencies will be subject to the affirmative procedure”.
- the enforcement powers in clause 17 amended to state that “the regulation-making powers of the Secretary of State introduced by Section 16G(6) to enable the enforcement of the duties imposed by Section 16G(4), cannot ‘create criminal offences’”.<sup>198</sup>

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<sup>196</sup> [GC Deb 11 July 2016 cc28–30](#)

<sup>197</sup> [GC Deb 11 July 2016 c30](#)

<sup>198</sup> [HC Deb 18 October 2016 cc2322–2323](#)



An amendment was tabled by the Government in respect of Clause 13 to change the circumstances in which a local authority had to inform the Panel if it suspected that a child had been abused or neglected. This removed the requirement to report any death of looked after child or the death of a child in a regulated setting. The Minister assured the House that “this in no way weakens the scope of the panel’s powers. All cases where the local authority knows of or suspects abuse or neglect, including of looked-after children and of children in regulated settings, such as children’s homes and secure institutions, must still be notified to the panel under the general duty to notify cases of death or serious harm”.

In addition, the amendment “clarifies that it is the responsibility of the local authority where the child is normally resident to notify when a child dies or is seriously harmed while outside England and when abuse or neglect is known or suspected”.<sup>199</sup>

The Government also tabled a number of amendments that were “relatively minor refinements” to “more precisely clarify the overall purpose of the new local and national reviews”. For example, the Minister noted that:

The amended wording states that the purpose of a review should be to identify,

“improvements that should be made”,

rather than,

“to ascertain what lessons ... can be learned”.

We have listened to noble Lords’ comments in Committee, and heard consistently that reviews of incidents of serious harm to, or death of, children should focus on what can be done to reduce the chances that such incidents will be repeated. We therefore feel that it is necessary to step away from the broad language of “lessons learned”, which all too often has focused on what went wrong and who is to blame, rather than focusing on why things went wrong, and what can be improved to reduce these incidents in the future.<sup>200</sup>

Lord Warner tabled amendment 40 which would have required the Secretary of State’s guidance to the Child Safeguarding Practice Review Panel to include guidance on the “handling the implications for a local authority’s discharge of their safeguarding responsibilities in respect of any judicial decision-making in a particular review”, and cited the recent case of the murder of Ellie Butler and the role of the Judge in that case.<sup>201</sup>

In response, the Minister said “It is not that the panel cannot review and make recommendations; it can. It just cannot direct the judiciary, although we will work with it to make sure that lessons are conveyed”, but added “I do not feel that it would be appropriate to include guidance from the Secretary of State to the panel on this issue ... However, as each case will be different, general guidance to address

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<sup>199</sup> [HC Deb 18 October 2016 cc2329](#)

<sup>200</sup> [HC Deb 18 October 2016 cc2324](#)

<sup>201</sup> [HC Deb 18 October 2016 cc2325–2327](#)

what will be a case-by-case consideration is not likely to be beneficial or practicable".<sup>202</sup>

In regard to the child death review panels, the Government tabled amendments in order to "explicitly enable child death review partners to review the death of a child not normally resident in their local area in order to ensure that improvements can be made, especially in the area where the death occurred", and to "sharpen[] the terminology of what should be reviewed and analysed by child death review partners by making it clear that they should review the death or deaths relevant to the welfare of children in the area or to public health and safety".<sup>203</sup>

The amendments were agreed to.

### **Third Reading**

Two amendments, which were described by the Minister as "technical and consequential" were made.<sup>204</sup>

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<sup>202</sup> [HC Deb 18 October 2016 cc2328](#)

<sup>203</sup> [HC Deb 18 October 2016 cc2330](#)

<sup>204</sup> [HC Deb 23 November 2016 cc1948–1949](#)

## 4. Pre-employment protection of whistleblowers

**Clause 31** of the Bill would provide a power for the Secretary of State to extend whistleblower protections to persons who apply to work in “children’s social care positions”, as defined in the Bill.

### 4.1 Explanation of clause 31 of Bill 99

Clause 31 would amend Part 5A of the *Employment Rights Act 1996*, inserting into it a new section 49C entitled “Children’s social care: regulations prohibiting discrimination because of protected disclosure”. The key provision in that section would be section 49C(1):

The Secretary of State may make regulations prohibiting a relevant employer from discriminating against a person who applies for a children’s social care position (an “applicant”) because it appears to the employer that the applicant has made a protected disclosure.

“Relevant employers” would include, among others, local authorities and councils (section 49C(7)). A position would be a “children’s social care position if the work done in it relates to the children’s social care functions of a relevant employer” (section 49C(3)). The [Explanatory Notes](#) to the Bill state:

For the purposes of this new section, an employer discriminates against an applicant if, because it appears to the employer that the applicant has made a protected disclosure, the employer refuses the applicant’s application or in some other way treats the applicant less favourably than it treats or would treat other applicants in relation to the same contract.<sup>205</sup>

If the power were exercised the regulations would cover England, Scotland and Wales. Under sections 49C(10) and 49C(11) the Secretary of State would be required to consult Scottish and Welsh Ministers before making and such regulations.

### 4.2 Background

At present, whistleblower law – contained in the *Employment Rights Act 1996*, as amended – protects workers from being subjected to detriment for making public interest disclosures, but does not protect job applicants.<sup>206</sup> As such, it would not prohibit an employer from refusing to employ someone because they had blown the whistle during their previous employment.

While this is general position, there is a delegated power in the 1996 Act that could enable certain job applicants to be protected, namely workers in the health service. [Section 149](#) of the *Small Business*,

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<sup>205</sup> *Children and Social Work Bill [HL] Explanatory Notes*, p26, para 174

<sup>206</sup> For further information see the Library’s briefing: [Whistleblowing and gagging clauses](#), CBP-7442, 4 January 2016

*Enterprise and Employment Act 2015* inserted a new section 49B into the 1996 Act empowering the Secretary of State to:

make regulations prohibiting an NHS employer from discriminating against an applicant because it appears to the NHS employer that the applicant has made a protected disclosure.

This resulted from a government amendment to the *Small Business, Enterprise and Employment Bill* during its passage through the Lords. The amendment was tabled in response to growing calls to strengthen whistleblowing protections for NHS workers following the publication of Sir Robert Francis's [Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry](#) in February 2013. In speaking to the amendment at the time, the Minister, Baroness Neville-Rolfe, said:

we are protecting whistleblowers from being discriminated against when applying to work in the NHS... the Government have tabled an amendment in response to the recent Francis review. This recommended that the Government,

- "review the protection afforded to those who make protected disclosures, with a view to including discrimination in recruitment by employers".

Based on Sir Robert's findings, we are convinced that blacklisting applicants for NHS jobs because they are whistleblowers causes a very serious injustice. They are effectively excluded from the ability to work again in their chosen field. When NHS staff raise concerns, they can save lives and prevent harm. That is why we are taking the opportunity, very much at the last stage of the Bill, to protect whistleblowers seeking employment in the NHS.<sup>207</sup>

The power to make regulations under section 49B of the 1996 Act has not been exercised.

### 4.3 Lords debate on clause 31

Clause 31 would provide a similar power to that in section 49B of the 1996 Act, albeit in the context of children's social care.

The clause came about following a number of amendments moved by Baroness Wheeler (Labour), some of which sought to cast protection widely, to local authority recruitment more generally. For the Government, Viscount Younger of Leckie highlighted technical difficulties with the widely cast proposals, but supported the narrowly framed proposal that focussed protections on applicants for children's social care positions. His Lordship responded to the amendments as follows:

...those working with the most vulnerable children in society need to be able to report concerns about what is happening in their organisation. Importantly, when they make a protected disclosure they should have no fear of being effectively blacklisted and unable to find a new role. Employment legislation is designed to protect workers from being unfairly dismissed by their employer, or from suffering other detriment such as missing out on promotion, if they report concerns that are in the public interest. That is why we have statutory employment protections for workers who report information which they reasonably believe

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<sup>207</sup> [HL Deb 11 March 2015 c699](#)

reveals illegal activity or malpractice in an organisation. This may include someone at work neglecting their duties—for example, in a case where health and safety is put at risk.

[...]

I hope that the noble Lord, Lord Wills, and the noble Baroness, Lady Wheeler, will be assured that we are taking what action we can at this stage, and that we see this as particularly important in the area of children's social care. That is why I am delighted that we have been able to work co-operatively with the noble Lord to support the principle of his proposed measure and in doing so to create a more pragmatic amendment within the scope of the Bill. We therefore agree with Amendment 53B that protections will apply to those seeking employment with specified public bodies in roles relating to local authorities' children's social care functions, and that those protections should apply to the whole of Great Britain in line with other employment legislation.

The clause was agreed to without division.

## 5. Social Workers

Part 2 of the [Children and Social Work Bill \[HL\] 2016-17](#) deals with social work regulation in England. Social work regulation is a devolved policy area. As such, Part 2 extends to England and Wales and applies in England only.

### 5.1 Explanation of Part 2 of Bill 99

Part 2 of the current Bill differs significantly from the version initially presented to the House of Lords.

This section of the briefing paper provides an overview of the main provisions of Part 2 as presented to the Commons. The [Explanatory Notes to the Bill](#) provides a more detailed explanation.<sup>208</sup>

Details of what happened in the Lords are set out in subsequent sections.

#### Social Work England

Clause 33 would create a new independent regulator of social workers in England called Social Work England. Schedule 2 sets out provisions relating to the governance of the regulator, including: powers to appoint members and staff; powers for the regulator to delegate functions; and requirements as to annual reports and accounts.

The Government's [Social Work Regulatory Reform – Update to Policy Statement](#), published on 1 November 2016, provides the following summary of the provisions:

The Bill now states that there will be a new body and that it will be known as Social Work England; that there will be a Chair and a Board appointed by the Secretary of State; that the Secretary of State may appoint the first Chief Executive; and that going forward this will be the responsibility of the Board with Ministers merely approving the appointment. It is our intention that the Board will, in line with principles of good modern governance, provide strong and capable leadership. It will consist of a majority of non-executive members and will be able to act on behalf of the public in securing public protection. Social Work England will be able to employ the staff it needs, and have a clear set of responsibilities which it will be accountable for delivering.<sup>209</sup>

The overarching objective of the new regulator in exercising its functions would be the protection of the public (Clause 34).

Clause 35 would enable the Secretary of State, through regulations, to permit or require the regulator to: appoint one or more individuals or panels of individuals to advise it on matters relating to its functions; and make provision about the functions of those people or panels appointed.

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<sup>208</sup> [Bill 99 – EN](#)

<sup>209</sup> Department for Education and Department of Health, [Social Work Regulatory Reform – Update to Policy Statement](#), 1 November 2016, p.4

## Regulation of social workers in England

Clauses 36 to 41 outline the regulator's functions and the scope of regulations that may be made by the Secretary of State for the purpose of social work regulation.

The Government's November 2016 updated policy statement summarises the regulator's functions as follows:

The new body will be known as Social Work England and it will have a clear remit around maintaining a register of social workers, running fitness to practise hearings and setting standards for initial education and training and professional standards, including standards of proficiency and continuous professional development. We intend that, over time, Social Work England will work to raise the minimum standards across all these aspects.<sup>210</sup>

### Registration

Clause 36 would require the regulator to keep a register of social workers in England.

The Secretary to State may, through regulations:

- require the regulator to keep a register of those who are undertaking education or training in England to become social workers;
- authorise the regulator to appoint a member of staff as a registrar and make provision about the functions of the registrar; and
- make other provision in connection with the keeping of a register, for example about who can be registered and stay registered; different categories of registration; and suspension and removal from the register.

### Restrictions on practice and protected titles

Clause 37 would allow the Secretary of State to make regulations imposing prohibitions or restrictions in connection with:

- the carrying out of social work in England;
- the use, in relation to social work in England, of titles or descriptions specified in the regulations; and
- the holding out of a person as being qualified to carry out social work in England.

These provisions could enable the carrying out of social work functions to be restricted to qualified social workers.

### Professional standards

Clause 38 would require the regulator to determine and publish professional standards for social workers in England. If the regulator were required to keep a register of students, it must also determine and publish standards of conduct or ethics for registered students.

Before determining a professional standard the regulator must:

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<sup>210</sup> Department for Education and Department of Health, [Social Work Regulatory Reform – Update to Policy Statement](#), 1 November 2016, p.3



- consult appropriate persons; and
- obtain the Secretary of State's approval of the standard.

The Secretary of State may, by regulations, make provision about arrangements for assessing whether a person meets professional standards.

### **Education and training**

Clause 39 would require the regulator to determine and publish standards of social work education or training. Before determining standards the regulator would be required to:

- consult with such persons it considered appropriate; and
- obtain the Secretary of State's approval for the standard being set

The Secretary of State may, by regulations, make provision for the regulator to operate an approval scheme for social work courses and qualifications. Regulations may make provision in connection with the approval scheme, for example about the criteria for approval or continued approval; the procedure for approval or renewal of approval; the appointment of people to carry out inspections; and appeals against decisions in connection with approval.

### **Discipline and fitness to practise**

Clause 40 would require the regulator to make arrangements for protecting the public from social workers in England whose fitness to practise is impaired, and to make arrangements for taking other disciplinary action against social workers in England.

The Secretary of State may, by regulations, make further provision about fitness to practise as a social worker, and the discipline of social workers or registered students. For example, the regulations may make provision about the circumstances in which a person's fitness to practise is impaired or disciplinary action may be taken; the appointment of assessors, examiners or other advisers; sanctions; and appeals.

### **Offences**

Clause 41 would enable the Secretary of State, by regulations, to create offences in connection with registration; restrictions on practice and protected titles; failing to comply with a requirement to provide documents or other information or to attend and give evidence; and providing false or misleading information or evidence.

The regulations under this clause must provide for the offence to be triable on a summary basis only and the offences may not be punishable with imprisonment.

### **Approval of courses in relation to mental health social work**

The Government is keen to promote the development of post-qualification specialist practice. In the first instance it expects the regulator to approve post qualifying courses relating to Approved Mental Health Professionals (AMHPs) and to specify training for Best Interest Assessors (BIAs). The Government anticipates that over time the

regulator may have a role in supporting efforts to develop post-qualifying specialisms for accredited child and family practitioners.<sup>211</sup>

### **Approved Mental Health Professionals (AMHPs)**

Clause 42 would enable the Secretary of State, by regulations, to transfer the Health and Care Professions Council's function of approving courses for AMHPs to the regulator, and to give the regulator power to charge fees for approving courses. The regulations may include further provisions in connection with the approval of AMHP courses or charging of fees.

It is the Government's intention that when a social worker who is an AMHP secures the approval of the relevant local authority, the regulator will be able to annotate the register to indicate that a social worker is approved to practice as an AMHP.<sup>212</sup>

### **Best Interest Assessors (BIAs)**

Best Interest Assessors (BIAs) "play a key role in the Deprivation of Liberty Safeguards which provide a legal framework for ensuring that the care arrangements for people who lack the mental capacity to consent to such arrangements are the least restrictive and in the best interests of that person".<sup>213</sup>

Clause 43 would amend the *Mental Capacity Act 2005* to allow training in connection with BIAs to be specified by Social Work England or the Secretary of State. Regulations may also give the regulator the power to charge a fee for specifying training.

It is the Government's intention that the register of social workers would be annotated to indicate if a social worker is a BIA.<sup>214</sup>

### **Fees and grants**

Clause 44 would allow the Secretary of State, through regulations, to confer power on the regulator to charge fees in connection with specific functions. The regulator would be responsible for setting the level of fees; it must consult appropriate persons and obtain the approval of the Secretary of State before determining the level of any fee.

Fees should be set to ensure, in so far as possible, that the regulator's fee income does not exceed its expenses. The regulator must pay any fee income to the Secretary of State unless the Secretary of State (with consent of the Treasury) directs otherwise.

Clause 45 would permit the Secretary of State to fund the regulator through grant payments.

The Government has confirmed that:

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<sup>211</sup> Department for Education and Department of Health, [Social Work Regulatory Reform – Update to Policy Statement](#), 1 November 2016, p.3

<sup>212</sup> Department for Education and Department of Health, [Regulating Social Workers: Policy Statement](#), 27 June 2016, p. 26

<sup>213</sup> Department for Education and Department of Health, [Regulating Social Workers: Policy Statement](#), 27 June 2016, p. 27

<sup>214</sup> Department for Education and Department of Health, [Regulating Social Workers: Policy Statement](#), 27 June 2016, p. 27

- The costs of setting up the regulator (estimated to be £10 million) will be met by the Government;
- The regulator's ongoing costs will be met through a combination of social worker registration fees and Government funding. The Government will contribute up to £16 million towards running costs over the 2015 Parliament;
- The Government has no plans at this time to require the body to be self-financing; and
- The costs of establishing and running the new body will be set out in full in an impact assessment that will be published alongside the relevant secondary legislation.<sup>215</sup>

### Information and co-operation

Clauses 46 would permit the regulator to publish or disclose information, or to give advice, about any matter relating to its functions. It also enables the Secretary of State, through regulations, to require the regulator to publish or disclose information, or give advice, about any matter relating to its functions.

Clause 47 would require the regulator to co-operate where appropriate with the following in the exercise of its functions:

- Social Care Wales;
- the Scottish Social Services Council;
- the Northern Ireland Social Care Council; and
- any other person specified in regulations made by the Secretary of State.

### Oversight

Clause 48 would require the regulator to provide any information that the Secretary of State requests in relation to the exercise of its functions.

Clause 49 would enable the Secretary of State to take action by giving the regulator a remedial direction in the event that the regulator defaulted, or was likely to default, in performing any of its functions. It would also enable the Secretary of State to make further provision, by regulations, about remedial directions and their enforcement.

The regulator would be overseen by the Professional Standards Authority for Health and Social Care (PSA) (Clause 50 and Schedule 3).

### Regulations under Part 2

Clause 51 would allow regulations under Part 2 to confer functions or discretions on the regulator or a Minister of the Crown.

Regulations under Part 2 may:

- confer power on the regulator to make rules; and
- make provision in connection with the procedure for making those rules (including provision requiring the regulator to obtain

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<sup>215</sup> Department for Education and Department of Health, [Social Work Regulatory Reform – Update to Policy Statement](#), November 2016, p.6

the Secretary of State's approval before making rules of a specified description).

### **Consultation**

Clause 52 would require the Secretary of State to consult before making regulations under Part 2, and to lay a report about the consultation process before Parliament alongside draft regulations. These requirements would not apply in two circumstances:

- with regards to regulations renaming Social Work England; and
- if regulations amend other regulations and, in the opinion of the Secretary of State, do not make any 'substantial change'.

### **The affirmative resolution procedure**

Clause 53 would provide that all regulations under Part 2 be subject to the affirmative resolution procedure, with the exception of regulations which deal with the renaming of Social Work England.

### **Transfer scheme and repeal of existing powers to regulate**

Clause 54 would give power to the Secretary of State to make a scheme to transfer property, rights and liabilities from the Health and Care Professions Council to the new regulator.

Clause 55 would provide for the repeal of existing powers (in section 60 and 60A of the *Health Act 1999*) to regulate social workers.

### **Interpretation**

Clause 56 defines various terms used in Part 2.

### **Review by independent person**

Clause 57 would require the Secretary of State to commission an independent person to review the operation of Part 2 of the Bill. The review must be carried out five years after the new regulator come into being.

The independent person carrying out the review must consult with representatives of social workers in England, and anyone else the person considers appropriate, and provide a report on the findings of the review to the Secretary of State.

The Secretary of State would be required to lay the review report, and a response to the report, before Parliament.

## **5.2 Background**

### **The social work profession**

Social workers work with individuals and families to try and improve outcomes in their lives. Social work has existed as a profession for many years, although the use of the title of 'social worker' only became protected in England in April 2005.<sup>216</sup>

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<sup>216</sup> Under Section 61 of the *Care Standards Act 2000*

As at 1 November 2016, there were 95,575 registered social workers in England;<sup>217</sup> around a third of whom work in child and family social work.<sup>218</sup> Since 2003, the main qualification route into social work has been via university education, with either an undergraduate or postgraduate degree in social work. There are also 'fast-track' routes into the profession aimed at other graduates and career changers.<sup>219</sup>

## Social work regulation in England

Social work regulation is a devolved matter in the UK.

Social workers in England are currently regulated alongside 15 other health and care professions by the [Health and Care Professions Council](#) (HCPC) under the *Health and Social Work Professions Order 2001*, an Order in Council made under section 60 of the [Health Act 1999](#), both as amended.

The key role of HCPC is to protect the public by ensuring that only qualified and competent practitioners are allowed to practice as social workers. Social workers wishing to practice must be registered with HCPC. In order to register, social workers must be qualified and agree to adhere to a professional code of practice. Those social workers who do not adhere to the code of practice can be removed from the register.

The work of HCPC is overseen by the [Professional Standards Authority for Health and Social Care](#).

Alongside HCPC, the three other social work regulators in the UK are the [Care Council for Wales](#), the [Northern Ireland Social Care Council \(NISCC\)](#), and the [Scottish Social Services Council \(SSSC\)](#). Collectively they are known as 'the Four Councils'.<sup>220</sup>

The Four Councils have agreed a [Memorandum of Understanding](#) setting out a framework for their working relationship with regards to the regulation of social workers and the approval of social work education across the UK.<sup>221</sup>

## Social work reform

Policy responsibility for social work in England is primarily shared between the Department of Health (adult social care) and the Department for Education (children and families).

The last decade has seen a series of reviews, reports, and reforms of social work. An array of reform initiatives have been, or are in the process of being, put in place to improve the quality of social work in England and strengthen the profession. Yet the extent to which these

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<sup>217</sup> Health and Care Professions Council, [Social Workers in England](#) (webpage)

<sup>218</sup> Department for Education, [Nicky Morgan unveils plans to transform children's social work](#), 14 January 2016, Notes to Editors

<sup>219</sup> For example, [Step-Up to Social Work](#) and [Frontline](#)

<sup>220</sup> Health and Care Professions Council, [UK social work regulation](#) [accessed 27 October 2016]

<sup>221</sup> [Memorandum of Understanding between the Care Council for Wales, the Health and Care Professions Council, the Northern Ireland Social Care Council and the Scottish Social Services Council](#), November 2013

measures have impacted on the frontline of social work has been called into question.<sup>222</sup>

Whilst there is evidence of much good social work practice in England, a number of serious case reviews and inspections have highlighted inconsistency in practice across the country, and in some cases have pointed to serious failings in practice.<sup>223</sup> Two independent reviews of social work education in 2014 highlighted the need for improvement in social worker initial education and continuous development.<sup>224</sup> In October 2016 the National Audit Office published a report criticising the Government's progress in improving children's services.<sup>225</sup>

It is widely recognised that the social work profession continues to face considerable challenges. Social workers are under pressure from increasing service demands and expectations, at a time when public sector funding is under pressure.<sup>226</sup> A survey of social workers in 2012, conducted by the British Association of Social Workers (BASW), found that 77% of respondents thought their caseloads were at an unmanageable level.<sup>227</sup> There is evidence that high caseloads, media coverage of high profile failures and a 'blame culture', are driving experienced social workers from the profession.<sup>228</sup> High vacancy and turnover rates are a growing concern; the average social work career is less than 8 years, compared to 16 for a nurse and 25 for a doctor.<sup>229</sup>

In a speech in September 2015 the Prime Minister emphasised that reform of social services and child protection was a key priority for the Government and "a big area of focus over the next 5 years".<sup>230</sup>

The Government has subsequently published a number of policy papers setting out its broad social work reform proposals, notably: *Children's social care reform: A vision for change* (January 2016);<sup>231</sup> *Vision for adult social work in England* (July 2016);<sup>232</sup> and *Putting children first: delivering our vision for excellent children's social care* (July 2016).<sup>233</sup>

<sup>222</sup> All Party Parliamentary Group on Social Work, [Inquiry into the State of Social Work report](#), 2013

<sup>223</sup> Department for Education and Department of Health, [Regulating Social Workers: Policy Statement](#), 27 June 2016, para.22

<sup>224</sup> Department for Education, [Making the education of social workers consistently effective – Sir Martin Narey's independent Review](#), January 2014; [Department of Health, Re-visioning social work education: an independent review by David Croisdale-Appleby](#), February 2014

<sup>225</sup> National Audit Office, [Children in need of help or protection](#), 12 October 2016

<sup>226</sup> House of Commons Education Committee, [Social work reform: third report of session 2016-17](#), HC 201, 13 July 2016, Summary, p3

<sup>227</sup> The British Association of Social Workers, [The State of Social Work 2012](#), May 2012

<sup>228</sup> House of Commons Education Committee, [Social work reform: third report of session 2016-17](#), HC 201, 13 July 2016, Summary, p3

<sup>229</sup> Department of Health, [Department of Health strategic statement for social work with adults in England 2016-2020](#), July 2016, p5

<sup>230</sup> GOV.UK, [Prime Minister: My vision for smarter state](#), 11 September 2015

<sup>231</sup> Department for Education, [Children's social care reform: A vision for change](#), 14 January 2016

<sup>232</sup> Department of Health, [Vision for adult social work in England](#), 12 July 2016

<sup>233</sup> Department for Education, [Putting children first: delivering our vision for excellent children's social care](#), 4 July 2016

## The Education Select Committee's inquiry into social work reform

Prompted by a concern over the lack of clarity on how the Government intended to achieve its aims for social work reform, the House of Commons Education Committee launched an inquiry into the issue, and in November 2015 wrote to the Department for Education asking for further information on the Government's reform agenda.

The Committee published its report *Social Work Reform* on 13 July 2016.<sup>234</sup> The report welcomed the Government's commitment to strengthen social work practice, but raised concerns about several aspects of its reform strategy. The Committee published the [Government's response](#) to its report on social work reform on 13 October 2016.<sup>235</sup>

Further background information is provided in the Commons Library Briefing Paper: *Social Work Regulation (England)* (CBP07802).

## 5.3 Proposal for a new social work regulator

### Government's announcement and Queen's Speech

On 14 January 2016 Nicky Morgan, then Secretary of State for Education, announced her intention to establish a new regulatory body to improve standards in the social work profession, as part of broader social care reforms:

The new body will have a relentless focus on raising the quality of social work, education, training and practice in both children's and adult's social work. It will also set standards for training and oversee the roll out of a new assessment and accreditation system for children and family social workers. Over time, it will become the new regulatory body for social work, in place of the Health and Care Professions Council.<sup>236</sup>

In the May 2016 [Queen's speech](#) the Government set out its intention to introduce a *Children and Social Work Bill* in order to, amongst other things, "drive improvements in the social work profession, by introducing more demanding professional standards, and setting up a specialist regulator for the profession".<sup>237</sup>

### First policy statement on regulating social workers

On 27 June 2016, following Second Reading in the House of Lords, the Department for Education (DfE) and the Department of Health (DH) published a joint [Policy Statement on Regulating Social Workers](#), outlining the Bill's provisions in greater detail.<sup>238</sup> The Policy Statement was accompanied by the [draft Social Worker Regulations](#), which set out

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<sup>234</sup> House of Commons Education Committee, [Social work reform: third report of session 2016-17](#), HC 201, 13 July 2016

<sup>235</sup> House of Commons Education Committee, [Social work reform: Government Response to the Committee's Third Report of Session 2016-17](#), HC 733, 13 October 2016

<sup>236</sup> Department for Education, [Nicky Morgan unveils plans to transform children's social work](#), 14 January 2016

<sup>237</sup> GOV.UK, [The Queen's Speech 2016 – Background Notes](#), 18 May 2016, p.32

<sup>238</sup> Department for Education and Department of Health, [Regulating Social Workers: Policy Statement](#), 27 June 2016 [HC DEP 2016-0569]



the broad content the Government expected secondary legislation to cover.<sup>239</sup>

The Government initially proposed to establish a new social work regulator as an executive agency of government, with a commitment to review this position within three years. It expected the regulator to be up and running by 2018.

Further, the Government envisaged that the new regulator would have a wider remit than the current regulator, HCPC. The Policy Statement proposed that the regulator's primary objective would be: "to protect the health and well-being of the public and to promote confidence in the social work profession".<sup>240</sup> It would do this by putting in place "an end to end regulatory system that supports high standards of social work practice from initial qualification, into employment and throughout a social work career".<sup>241</sup>

The Government proposed that the new body would:

- Publish new professional standards, aligning with the Chief Social Workers Knowledge and Skills statements;
- Set new standards for qualifying education and training, and reaccredit providers against these standards by 2020;
- Maintain a single register of social workers, annotating it to denote specialist accreditations;
- Set new, social work specific, standards for continuous professional development;
- Oversee a robust and transparent fitness to practise system;
- Approve post qualifying courses and training in specialisms such as Approved Mental Health Professionals and Best Interest Assessors;
- Oversee the proposed new assessment and accreditation system for child and family social workers; and,
- Oversee the required arrangements for successfully completing the Assessed and Supported Year in Employment (ASYE).<sup>242</sup>

It put forward the following arguments for creating a social work specific regulator and establishing it as an executive agency of the Department for Education, as opposed to a 'wholly independent' regulator:

- HCPC regulates several professions and focuses on maintaining appropriate minimum standards of public safety. In the Government's view it lacks the status and specific expertise to deliver improvements to social work. A new social work specific regulator would arguably have greater scope to focus on and raise standards in social work;

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<sup>239</sup> Ibid., para 66

<sup>240</sup> Ibid., para 57

<sup>241</sup> Department for Education and Department of Health, [Regulating Social Workers: Policy Statement](#), 27 June 2016, para 33

<sup>242</sup> Department for Education and Department of Health, [Regulating Social Workers: Policy Statement](#), 27 June 2016, p5

- HCPC's remit is focused on initial social worker qualification, it does not set post-qualification professional standards. A new regulator would be able to also take on responsibility for setting continuous professional development standards and approving post-qualifying courses and training. With the closure of the College of Social Work in 2015, social workers do not have a professional body to carry out this function;
- To be effective, a wholly independent regulator would arguably need to be partnered by a strong professional body, which the social work profession has been unable to sustain. Furthermore, establishing a wholly independent regulator from scratch would take time and be more expensive; and
- Establishing the regulator as an executive agency would provide a mechanism for DfE and DH to quickly and effectively drive forward change. It would also minimise cost and set up time.<sup>243</sup>

## Reactions to the Government's initial policy proposal

The Government's aim to improve the quality of social work practice was widely supported. The Association of Directors of Children's Services welcomed efforts to raise the profile and standing of the social work profession.<sup>244</sup> In a joint statement on the *Children and Social Work Bill*, published in July 2016, the British Association of Social Workers, and a number of other stakeholders, said: "we are not opposed to exploring new social work regulation options. We support steps to improve accountability of social workers, enabling them to show increasing specialism and skill".<sup>245</sup>

However, some elements of the Government's proposal on regulating social workers proved to be controversial. A number of concerns were raised by stakeholders about:

- the need for regulatory change;
- the impact of further change on social workers;
- the Bill's reliance on delegated legislation;
- the social work regulator's independence from Government;
- the distinction between regulation and improvement;
- the costs of setting up and running the social work regulator;
- the lack of consultation with the social work sector; and
- social work policy fragmentation.

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<sup>243</sup> Department for Education and Department of Health, [Regulating Social Workers: Policy Statement](#), 27 June 2016

<sup>244</sup> 'Children and Social Work Bill Announced in the Queen's Speech', *Association of Directors of Children's Services*, 18 May 2016

<sup>245</sup> The British Association of Social Workers, [Joint Statement on the Children and Social Work Bill](#), 1 July 2016

## Government's updated policy statement on regulating social workers

In light of the concerns listed above, on 1 November 2016 DfE and DH published an updated policy statement<sup>246</sup> The statement accompanied Government amendments at Lords Report Stage to revise its initial proposal. At the same time the Government withdrew the draft regulations published in June 2016.

The key revisions to the initial regulatory proposal included:

- placing greater detail about the new social work regulator in primary legislation;
- establishing the regulator as a separate, independent Non-Departmental Public Body overseen by the Professional Standards Authority for Health and Social Care (PSA);
- focusing the regulator's role on professional regulation rather than professional development; and
- requiring the regulator to consult with the social work sector, and seek Ministerial approval, when setting professional, education and training standards.<sup>247</sup>

The Government also announced that it had:

- set up an Advisory Group, consisting of key social work sector representatives, to work through the detail of the proposal; and
- committed to fund the regulator's set-up costs and to contribute up to £16 million towards the regulator's running costs over the rest of the 2015 Parliament.<sup>248</sup>

The rest of section 5 of this paper examines in more detail the concerns raised about Part 2 of the Bill and the Government's responses.

## 5.4 The need for regulatory change

During Second Reading, some Members of the Lords questioned the need for social work regulatory change, particularly when the Health Care and Professions Council (HCPC) was considered to be performing well, and when the social work profession was already under pressure from other reform initiatives. Baroness Pitkeathley, for example, said:

...The HCPC is now assessed by everybody who knows this field as doing an excellent job, and doing it most efficiently and cost effectively. So while I bow to no one in my desire to see the profession of social work properly recognised and supported, I have to ask the Minister why he is doing this, and what he expects to gain from it.<sup>249</sup>

<sup>246</sup> Department for Education and Department of Health, [Social Work Regulatory Reform – Update to Policy Statement](#), November 2016

<sup>247</sup> Ibid.

<sup>248</sup> Department for Education and Department of Health, [Social Work Regulatory Reform – Update to Policy Statement](#), November 2016

<sup>249</sup> [HL Deb 14 June 2016 c1187](#)

Other Lords questioned whether regulatory change on its own would be sufficient to achieve the Government's objectives. The Liberal Democrat's Spokesperson for Education, Lord Storey, commented:

Part 2 of the Bill, dealing with social worker regulations, is about enhancing their status. That is fine, but I am not convinced that removing functions from one body and establishing them in another is the best way of achieving this. Governments of all political persuasion seem obsessed with creating new bodies for new policy direction...<sup>250</sup>

The British Association of Social Workers raised concerns about the impacts of further change on the sector:

The seemingly constant process of review and repetition by government, e.g., proposals for a new regulator to replace the Health and Care Professions Council (HCPC) that in turn replaced the General Social Care Council (GSCC), undermines the progress made by previous initiatives. It also wastes time, money and resources and further depletes the morale of the profession.<sup>251</sup>

The Local Government Association also highlighted the "risks of further disruption, uncertainty and increased costs to employers, and potential confusion for social workers themselves".<sup>252</sup> The Association of Directors of Children's Services urged the Government to avoid "destabilising or demoralising" social workers.<sup>253</sup>

The Education Select Committee's report on social work reform was critical of the Government's focus on structural change, and instead recommended urgent action to address issues such as poor working conditions and lack of professional development.<sup>254</sup> The Committee concluded: "...We are unclear as to why a change of regulator is needed, and call on the Government to rethink its plans".<sup>255</sup>

## 5.5 Reliance on delegated legislation

Part 2 of the Bill, as introduced in the Lords, set a framework for the regulation of social work in England, with most of the detail to be covered in secondary legislation. It conferred a power on the Secretary of State to make regulations for the purpose of regulating social workers. The regulations could deal with a broad range of matters including:

- appointing a person or establishing a body to be the new regulator;
- the registration of social workers;

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<sup>250</sup> [HL Deb 14 June 2016 c1196](#)

<sup>251</sup> Education Committee, Written evidence submitted by the British Association of Social Workers to the House of Commons Education Committee ([SWR0029](#)), March 2016

<sup>252</sup> Education Committee, Written evidence submitted by the Local Government Association to the House of Commons Education Committee ([SWR0012](#)), March 2016, para.2.5

<sup>253</sup> '[Children and Social Work Bill Announced in the Queen's Speech](#)', *Association of Directors of Children's Services*, 18 May 2016

<sup>254</sup> House of Commons Education Committee, [Social Work Reform – Third Report of Session 2016-17](#), HC 201, 13 July 2016, paras 114 and 115

<sup>255</sup> *Ibid.*, para.93

- restrictions on practice and protected titles;
- professional standards;
- education and training;
- discipline and fitness to practise;
- advisers to the regulator;
- default powers;
- publication and sharing of information;
- a duty to co-operate with others;
- transfer schemes;
- fees;
- grants;
- the creation of offences in connection with specified matters; and
- conferral of functions and sub-delegation.

The Bill also required the Secretary of State to carry out a public consultation before making regulations, which would be subject to the affirmative resolution procedure.

### **The Department for Education (DfE) Memorandum concerning the Delegated Powers in the Bill**

The DfE's memorandum on delegated powers stated that the specific provisions for delegated legislation in the Bill had been developed on the basis of the following considerations:

That the legislative framework must be clearly presented on the face of the Bill with secondary legislation used to provide the detail;

That within that framework, the provisions must also support effective implementation and contain sufficient flexibility to respond to changing circumstances;

That the power to make secondary legislation must be narrowly drawn so that, although there are a number of regulation making powers, there is greater clarity of intention than would be the case with fewer but more general secondary legislation making powers;

That operational, administrative and technical details are not normally set out in primary legislation as too much detail on the face of primary legislation risks obscuring the principal duties and powers from Parliamentary scrutiny.<sup>256</sup>

The memorandum explained that the approach adopted in Part 2 of the Bill broadly reflected the way in which the regulation of social workers currently operates, i.e. using secondary legislation (see above).

It also explained that the 1999 Act prevented amendments being made to the 2001 Order to transfer the functions of HCPC to another

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<sup>256</sup> Department for Education, [\*Children and Social Work Bill: Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee\*](#), 19 May 2016, p.4

regulator. For these reasons the Government decided to enact new provisions for the regulation of social workers.

Given the range of matters in relation to which social worker regulations could be made, the Government considered that the approval of Parliament through the affirmative procedure was appropriate, as was a statutory public consultation, also provided for in the Bill.

## Report of the Constitution Committee

In its June 2016 report on the Bill the House of Lords Constitution Committee expressed concern about the extensive regulation-making powers granted to the Secretary of State, and considered that more provisions should be included in primary legislation:

We would expect the creation of a significant statutory body, such as a regulator, to be enacted by primary legislative provision to enable proper parliamentary scrutiny. The House may wish to consider whether it is appropriate for the creation of a regulator of social workers to be left entirely in the hands of the Secretary of State, rather than set out to some degree on the face of the Bill.<sup>257</sup>

The Committee also expressed concern about Clause 34, which enabled social worker regulations to be used to create offences in connection with matters specified in the Bill. The Committee concluded:

The House may wish carefully to consider how it can appropriately scrutinise the creation of criminal offences which are not only themselves undefined but which will relate to other legislative provisions that are also still to be delineated.<sup>258</sup>

## Points raised during HoL Second Reading

The Shadow Spokesperson for Education, Lord Watson of Invergowrie, was highly critical of the Bill's reliance on delegated legislation and echoed the concerns raised by the Lords' Constitution Committee: "Part 2 of the Bill covers social work, including, crucially, regulation. However ... the Bill disappears off into the mist ... it is a skeleton Bill ... What do these clauses mean? Ask 10 people and you might get 10 different answers".<sup>259</sup>

The Opposition argued that the Government was "treating Parliament with contempt"<sup>260</sup> and moved an amendment at Second Reading calling on the Government to publish draft secondary legislation so as to allow proper Parliamentary scrutiny.<sup>261</sup>

Members from all sides of the House of Lords expressed concern about their inability to scrutinise important details of the policy which would be covered by secondary legislation.

In response, the Minister, Lord Nash:

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<sup>257</sup> House of Lords Select Committee on the Constitution, *2<sup>nd</sup> Report of Session 2016-17: Children and Social Work Bill [HL]*, 13 June 2016, p.2

<sup>258</sup> *Ibid.*, p.2

<sup>259</sup> [HL Deb 14 June 2016 c1120](#)

<sup>260</sup> [HL Deb 14 June 2016 c1120](#)

<sup>261</sup> [HL Deb 14 June 2016 c1118](#)

- noted that Clauses 20 to 40 contained only two new delegated powers (Clauses 20 and 39) and one extension of an existing power (Clause 40). Furthermore, he contended that the provisions were narrower than the existing regime of delegated legislation flowing from section 60 of the *Health Act 1999*,
- stated the Government’s view that delegated legislation was the most appropriate vehicle to set out the role and functions of the new regulator, as this would provide a flexible legal framework which could be updated in respond to any future changes in professional standards and practice. This was in line with recent advice from the Law Commission on regulatory reform, which emphasised the need for flexibility in the exercise of a regulator’s functions, within the context of clear powers;<sup>262</sup> and
- committed to publish indicative draft regulations and policy statements before clauses containing delegated powers were debated in Committee.<sup>263</sup>

Lord Watson reiterated Lords’ concerns about the Government’s approach, but withdrew the amendment. He said:

It is inappropriate for the Government to continue to ride roughshod over the views of committees of your Lordships’ House—the Delegated Powers and Regulatory Reform Committee will give us its views in due course—and the views clearly expressed in this debate by noble Lords. Although it is not my intention to test the opinion of the House on this amendment, if this continues in future and further Bills come forward in a similar form, the Government should expect the Opposition to come forward with similar amendment, and on that occasion we may not be as accommodating. I beg leave to withdraw the amendment.<sup>264</sup>

## Report of the Delegated Powers and Regulatory Reform (DPRR) Committee

The Delegated Powers and Regulatory Reform (DPRR) Committee published its report on the Bill on 17 June 2016. It concluded that it did:

...not consider it inappropriate for the Government to place the regulation of social workers in subordinate legislation, despite the width of the powers being conferred.<sup>265</sup>

However, the Committee identified two specific concerns with the Bill. Firstly, the Committee considered it inappropriate that delegated legislation could be used to establish the regulator and transfer property, rights and liabilities from the old regulator to the new regulator:

...We regard it as inappropriate, given the importance of the regulator to the operation of the regulatory system, for the Bill to contain nothing on its face about the identity of the regulator, or about its membership and constitution. We note that the

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<sup>262</sup> Law Commission, Scottish Law Commission and Northern Ireland Law Commission, [Regulation of Health Care Professionals and Regulation of Social Care Professionals in England](#), CM 8839, April 2014

<sup>263</sup> [HL Deb 14 June 2016 c1117](#)

<sup>264</sup> [HL Deb 14 June 2016 c1210](#)

<sup>265</sup> House of Lords Delegated Powers and Regulatory Reform Committee, [1st Report of Session 2016-17](#), HL Paper 13, 17 June 2016, para.55



Constitution Committee reached a similar view. Similarly, we regard it as inappropriate, in the absence of convincing reasons, to include a power to abolish the existing regulator and transfer its functions to another body. This would represent a significant shift from the current position, and no reasons have so far been given justifying this extension of the powers.<sup>266</sup>

Secondly, the DPPR Committee expressed concern about Clause 35(3), which allowed regulations to include provisions which themselves would confer a further power to make, confirm or approve subordinate legislation. The Committee noted that although the earlier legislation conferred identical powers, the DfE memorandum did not explain how it expected the powers to be used.

Furthermore, the Committee considered that “On the face of it, clause 35(3) would allow social worker regulations to confer subordinate legislation making powers about any matter covered by clauses 21 to 35, and to do so without the need for Parliamentary scrutiny let alone requiring the affirmative procedure”.<sup>267</sup> The Committee therefore concluded that the delegated powers conferred by clause 35(3) were inappropriate despite the precedents in existing legislation.

## Government’s Policy Statement and Indicative Regulations

On 27 June 2016, prior to the Committee Stage of the Bill, the DfE and the DH published a joint policy statement on regulating social workers.<sup>268</sup> The statement outlined the Bill’s provisions in greater detail and was accompanied by [draft Social Worker Regulations](#), which set out broadly what the Government expected secondary legislation to cover.

## Government’s response to the Delegated Powers and Regulatory Reform (DPRR) Committee

The Government responded to the issues raised by the DPRR Committee by way of a letter from the Minister, Lord Nash, on 4 July 2016.<sup>269</sup>

Lord Nash drew attention to the Government’s Policy Statement of 27 June 2016, in particular the proposal to initially establish the regulator as an executive agency of Government, with a commitment to consult on this position after three years. He confirmed that the Government would bring forward amendments to the Bill to:

- specify that in the first instance regulatory responsibility would be exercised by the Secretary of State; and
- to require the Secretary of State to provide a report to Parliament on the consultation and before any transfer of the regulator’s role to another body.

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<sup>266</sup> House of Lords Delegated Powers and Regulatory Reform Committee, [1st Report of Session 2016-17](#), HL Paper 13, 17 June 2016, para.57

<sup>267</sup> House of Lords Delegated Powers and Regulatory Reform Committee, [1st Report of Session 2016-17](#), HL Paper 13, 17 June 2016, para.61

<sup>268</sup> Department for Education and Department of Health, [Regulating Social Workers: Policy Statement](#), 27 June 2016

<sup>269</sup> House of Lords Delegated Powers and Regulatory Reform Committee, [2nd Report of Session 2016-17](#), HL Paper 21, 8 July 2016, Appendix 2

With regards to Clause 35(3), Lord Nash confirmed that the purpose of the provision was to give the regulator scope to set rules governing the discharge of its functions, and set out procedural and administrative arrangements. The draft regulations included much of the core framework for these provisions and would be subject to the affirmative procedure. He asserted that there was already a precedent for this approach in the current legislation, and that it was in line with the Law Commission’s recommendation “that regulators should be given powers to make legal rules which are not subject to approval by Government or any Parliamentary procedure”.<sup>270</sup>

### Points raised during HoL Committee Stage

The issue of the Bill’s reliance on delegated delegation was raised again during Committee Stage. The Shadow Spokesperson for Health, Lord Hunt of Kings Heath, declared the use of regulations “unacceptable” and disputed that this approach reflected the current legislative arrangement of an Order in Council under Section 60 of the *Health Act 1999*. Lord Hunt pointed out that the Section 60 orders were based in primary legislation before social care was brought into the regulatory arrangement, and the first social worker regulator (the General Social Care Council) was established by primary legislation. He therefore contended that there was no reason why the Government could not set out the general provisions of social work regulation in primary legislation.<sup>271</sup>

In response, Lord Nash drew attention to the Government’s response to the DPRR Committee,<sup>272</sup> and reiterated the Government’s belief that delegated legislation was the most appropriate legal arrangement in light of: “the level of operational detail in the establishment and transfer of regulatory arrangements, the need to regularly review matters such as professional standards, and the mechanics of operating a professional register...”.<sup>273</sup>

With regards to concerns raised earlier about Clause 34 and Clause 35(3), Lord Nash referred Lords to the indicative regulations which clarified how the provisions were intended to be used.<sup>274</sup>

### The Government’s revised proposal

On 1 November 2016 the Government published an updated policy statement in support of amendments it put forward at Report Stage.<sup>275</sup> The updated statement confirmed that, in the light of the concerns expressed, the Government had revised the framework nature of the Bill.

<sup>270</sup> House of Lords Delegated Powers and Regulatory Reform Committee, [2nd Report of Session 2016-17](#), HL Paper 21, 8 July 2016, Appendix 2, p.11

<sup>271</sup> [House of Lords Grand Committee 5<sup>th</sup> Sitting, Children and Social Work Bill \[HL\], Vol. 774, No. 27](#), 13 July 2016, GC 124

<sup>272</sup> [GC Deb 13 July c125](#)

<sup>273</sup> [GC Deb 13 July c134](#)

<sup>274</sup> [GC Deb 13 July c145](#)

<sup>275</sup> Department for Education and Department of Health, [Social Work Regulatory Reform – Update to Policy Statement](#), 1 November 2016

A number of Government amendments were subsequently agreed at Report Stage. They provided for greater detail about the new regulatory body on the face of the Bill. In particular, [Amendment 71A](#) which established the new regulator – Social Work England – in primary legislation, with further provisions relating to the governance of the regulator set out in a Schedule to the Bill.

## 5.6 Independence from government

### Lords' concerns

A number of Lords had been strongly opposed to the Government's initial proposal that the new regulator should be established as an executive agency of the Department for Education. At Second Reading, the Shadow Spokesperson for Education, Lord Watson of Invergowrie, said:

We on these Benches are greatly concerned that, as things stand, the system outlined in the Bill places regulation of the profession under direct government control, removing the independence necessary to win the trust of social workers and the public. Even if the Secretary of State could become the regulator—we know that will not happen—even a government-appointed body would risk professional standards being subject to the political priorities of government, rather than a professional evidence base. These proposals will make social work the only health or social care profession to be directly regulated by government, and the Bill must be amended to create greater independence for any regulatory body established.<sup>276</sup>

At Committee Stage, Lord Warner moved [Amendment 135B](#), which sought to establish an independent regulator that would be accountable to Parliament through the Privy Council. It would have also ensured that the Professional Standards Authority for Health and Social Care (PSA) retained oversight of the regulator.

In his response the Minister, Lord Nash, reiterated the Government's view that there was "a strong and compelling case for moving the regulation of the profession closer to government at this time".<sup>277</sup>

Lord Warner withdrew his amendment.

### Stakeholder concerns

In a [joint statement on the Bill](#), published in July 2016 (see above), the British Association of Social Workers, and a number of other stakeholders, expressed their opposition to a Secretary of State-controlled regulatory body, which "would place social work in a politically controlled position unique amongst health and social care professions".<sup>278</sup> The Joint Statement contended that:

Should social workers be directly regulated by government, this will further weaken trust between them and Whitehall. It could have a negative impact on the extent to which social workers feel ownership of improvement initiatives, and paradoxically, could

<sup>276</sup> [HL Deb 14 June 2016, c1121](#)

<sup>277</sup> [GC Deb 13 July 2016 c130](#)

<sup>278</sup> The British Association of Social Workers, [Joint Statement on the Children and Social Work Bill](#), 1 July 2016

stifle the very development of the profession which government states it wants to see. It could even deter some social workers from maintaining their registration. We predict it would also stoke the demoralisation of social workers and the well documented current problems with recruitment and retention in parts of the workforce...<sup>279</sup>

The Local Government Association and the Association of Directors of Children's Services also supported the independent regulation of the profession.<sup>280</sup> A survey by [the union Unison](#) in August/September 2016 found that around 90% of social workers thought the profession should be regulated by an independent body and not by government.<sup>281</sup>

### The Government's revised proposal

At Report Stage in the Lords, the Government moved [Amendment 71A](#) which established the new regulator – Social Work England – as an independent Non-Departmental Public Body (NDPB).

The Government's updated policy statement published on 1 November (see above) acknowledged the concerns expressed in the Lords and by stakeholders and outlined the Government's revised position as follows:

It [Social Work England] will be a separate legal entity in the form of a Non-Departmental Public Body (NDPB), in line with the approach in the Devolved Administrations...

As an NDPB, there will be clear separation between the regulator and ministers and a clear role for government in holding the new regulator to account for overall delivery of its functions. This will be done jointly between the Department for Education and the Department for Health through regular accountability meetings monitoring delivery against the regulator's strategic objectives as set out in its remit letter and business plan.

Alongside this, we are proposing that the Professional Standards Authority (PSA) take a formal oversight role of the regulator. It will include carrying out an annual review of how the new regulator discharges its functions and will have a power to refer fitness to practice cases to the High Court where it feels that the action of Social Work England is not sufficient for the protection of the public.<sup>282</sup>

Amendment 71A was agreed without a vote and added to the Bill.

## 5.7 Separation of regulation and professional development

### Lords' Concerns

Several Lords expressed concerns about the Government's proposal that the new regulator should be responsible for both regulatory and

<sup>279</sup> The British Association of Social Workers, [Joint Statement on the Children and Social Work Bill](#), 1 July 2016

<sup>280</sup> Local Government Association, [Briefing - Children and Social Work Bill Committee Stage day 4 and 5, House of Lords](#), 11 July 2016; 'New regulatory body for social work comment', [Association of Directors of Children's Services](#), 24 October 2016

<sup>281</sup> UNISON, [What about the children? A UNISON report on social work reform in England](#), October 2016, p.7

<sup>282</sup> Department for Education and Department of Health, [Social Work Regulatory Reform – Update to Policy Statement](#), 1 November 2016, p. 4

improvement functions. They contended that the separation of regulation and professional development was a well-established principle, and that combining these functions would cause confusion and weaken the regulatory function.:

I repeat: the primary purpose of a regulator is public protection. That is quite distinct from quality improvement functions, which are commonly carried out by a professional body or college, whose primary functions are to improve education, training and continuing professional development. It is also different from the representative role fulfilled by a membership organisation, such as the British Association of Social Workers, whose primary role is to represent the interests and views of its members and provide advice and support to them. A new body of the kind proposed, combining representative, improvement and regulatory roles, will create an organisation with competing, confused and conflicting responsibilities...<sup>283</sup>

### Amendments moved at Committee Stage

At Lords Grand Committee stage Opposition spokespersons Lord Warner and Lord Hunt of Kings Heath moved amendments to establish a new general social work council as an independent regulator of social workers ([Amendment 135B](#)) and set up a new social work improvement agency ([Amendment 135C](#)). Together the Amendments were intended to separate the work of regulating social workers from their professional development. Lord Warner urged the Government to learn lessons from the past:

Combining regulatory functions with those of professional development distracts people from the main purpose of a regulator, which is to protect the public by upholding standards. With the Bill in its present form, the Government are doing just that. They are repeating the failings of the General Social Care Council, which they abolished, and are not learning the lessons from the regulator oversight work of the Professional Standards Authority. The likely outcome is muddle and delay in the important fitness-to-practice work of a regulator that protects the public from unsatisfactory professionals.<sup>284</sup>

Lord Hunt urged the Government to leave regulation with the Health and Care Professions Council, and to focus instead on supporting an improvement agency to raise social work standards.

In response the Minister, Lord Nash, sought to assure the Lords that the Government did not intend to set up a regulatory agency with dual and conflicting roles. Nevertheless, the Government considered there was a case to go beyond setting minimum standards for public protection:

Let me be clear: we do not intend to set up a regulator that also doubles as an improvement agency, nor are we setting up a professional body. The agency, however, will have a remit that goes beyond simply setting minimum standards for public protection. Just as the GMC standards define good medical practice, so the standards of the new regulator will seek to set out what constitutes good social work practice rather than what is

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<sup>283</sup> [HL Deb 14 June 2016, c1188](#)

<sup>284</sup> [GC Deb 13 July 2016 c116](#)

just acceptable. Social work requires an approach that goes beyond the traditional safety net role of professional regulation.

[...]

The reforms which are needed to practice standards cannot be addressed through the development of an improvement agency. To allow us to rapidly deliver improvements and to embed the new regulatory system, the regulator will set new tougher standards for initial qualification, focus on professional standards for post-qualification, set new standards for continuous professional development, maintain a single register of social workers and oversee a fitness-to-practice hearing system...<sup>285</sup>

The Opposition withdrew their amendments.

## Stakeholder concerns

In its August 2015 report *Rethinking Regulation* the Professional Standards Authority for Health and Social Care (PSA) raised concerns about “regulatory mission creep” whereby “multiple roles within the same organisation can result in a loss of focus on core issues, internal competition for resources, and a diffusion of purpose and responsibility”.<sup>286</sup> This issue was also raised by the Education Select Committee in its July 2016 report:

A regulator should concentrate on public protection by upholding standards and should not stray into defining professional standards for qualifying and post-qualifying education which we consider to be the role of an independent professional body. The Government’s proposals for a new regulator to have power in these areas will further marginalise the voice of social workers in influencing the standards of their profession. Our proposals for a successor for The College of Social Work should be the Government priority rather than changing the regulatory system once again.<sup>287</sup>

The Local Government Association and the British Association of Social Workers also made the case for the separation of regulatory and improvement functions.<sup>288</sup>

## The Government’s revised proposal

At Lords Report Stage the Minister, Lord Nash, moved [Amendment 71B](#) which set out the over-arching objective of the new regulator as the protection of the public. It would achieve this by pursuing three objectives:

To protect, promote and maintain the health, safety and well-being of the public;

To promote and maintain public confidence in social workers in England;

To promote and maintain proper professional standards for social workers in England.

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<sup>285</sup> [GC Deb 13 July 2016 cc141–142](#)

<sup>286</sup> Professional Standards Authority, *Rethinking Regulation*, August 2015, p.8

<sup>287</sup> House of Commons Education Committee, *Social Work Reform – Third Report of Session 2016-17*, HC 201, 13 July 2016, para.92

<sup>288</sup> For example, Local Government Association, *Briefing - Children and Social Work Bill Committee Stage day 4 and 5, House of Lords*, 11 July 2016, p.3; AND BASW Written evidence?

The Government's updated policy statement published on 1 November explained that the Government had listened to feedback, and as a result the role of the body would be clearly focused on professional regulation and that this would be reflected in its objectives.<sup>289</sup> The Government also said that the amendment was in line with the Law Commissions' 2014 review, which recommended a standardisation of objectives across regulatory bodies.<sup>290</sup>

Amendment 71B was agreed and added to the Bill.

## 5.8 Costs of social work regulation

Concerns were consistently raised in the Lords about the costs of setting up and running the new regulator. At Second Reading, Lord Watson of Invergowrie, speaking for the Opposition, said:

It is unclear why the Government wish to commit to the considerable costs of setting up a new regulator – as happened with the General Social Care Council around 10 years ago – at a time when council social care budgets continue to suffer as a result of reductions in central government funding.<sup>291</sup>

Baroness Pitkeathley noted that the cost of transferring regulatory responsibilities from the General Social Care Council (GSCC) to the Health and Care Professions Council (HCPC) in 2012 was around £17.9m. She expressed concern that the set up costs for the new regulator should not be passed on to social workers.<sup>292</sup>

Several Lords also questioned how the running costs of the new regulator would be funded. In particular, there was concern that the registration fee paid by social workers would need to be significantly increased if the new regulator was required to be self-financing.

The current social work regulator, HCPC, benefits from economies of scale from regulating 16 professions; the HCPC annual registration fee for social workers is £90 (as at 9 May 2016), the lowest of all the regulators overseen by the PSA.<sup>293</sup> It was noted that the previous regulator, GSCC, received a Government subsidy of around £16 million in 2009-10.<sup>294</sup> At the time of the GSCC's abolition, the Government estimated that removal of the subsidy would have resulted in an increase in the social worker annual registration fee to at least £235.<sup>295</sup>

Community Care magazine has estimated that a new regulator would cost at least £15 million a year to run, compared to the current HCPC annual registration fee income of around £7.1 million. The estimated

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<sup>289</sup> Department for Education and Department of Health, [Social Work Regulatory Reform – Update to Policy Statement](#), 1 November 2016, p.3

<sup>290</sup> Law Commission, Scottish Law Commission and Northern Ireland Law Commission, [Regulation of Health Care Professionals and Regulation of Social Care Professionals in England](#), CM 8839, April 2014, Appendix B, Recommendation 13

<sup>291</sup> [HC Deb 14 June 2016 c1121](#)

<sup>292</sup> [HC Deb 14 June 2016 c1189](#)

<sup>293</sup> Health and Care Professions Council, [Council Paper - New Regulatory body for social work](#), 9 May 2016, p.8, para.3.1

<sup>294</sup> [HC Deb 14 June 2016 c1189](#)

<sup>295</sup> [HC Deb 14 June 2016 c1189](#)



funding gap of £7.9 million would therefore need to be raised either by increasing social worker registration fees or by Government funding.<sup>296</sup>

The Education Select Committee's July 2016 report called on the Government to rethink its plans for a new regulator, particularly in light of the cost implications:

...The Government has already spent too much money changing regulatory bodies. Another change will either require further injection of significant public funds or place an unfair financial burden on individual social workers.<sup>297</sup>

## The Government's revised proposal

At Lords Report Stage the Government moved [Amendment 95](#) which would:

- make the regulator responsible for setting the level of fees in accordance with any provision made in regulations; and
- require the regulator to consult appropriate persons, and obtain the approval of the Secretary of State, before determining the level of any fees.

Amendment 95 was agreed and added to the Bill.

The Government's November 2016 updated policy statement provided further detail of the proposed funding arrangements for the new social work regulator:

...There will be a one off cost to move to the new arrangements and ongoing costs will be met through a combination of fees (as the current system does) and Government funding. We estimate that one off costs to set up the body will be £10m and this will be met by the Government. Government will also contribute funding to the running costs of Social Work England over the rest of this Parliament of up to £16m. We have no plans at this time to require the body to be self-financing and as with the current system Social Work England will be required to consult on any proposal to raise fees. The costs of establishing and running the new body will be set out in full in an impact assessment that will be published alongside the secondary legislation.<sup>298</sup>

## 5.9 Stakeholder consultation and engagement

The Government's June 2016 policy statement emphasised its commitment to developing the new regulatory system in consultation and collaboration with the social work sector.<sup>299</sup>

It said that early discussions had been held with a number of key stakeholders, and that the Government intended to set up an 'expert

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<sup>296</sup> ['Social work's new regulator will cost millions. Who will foot the bill?'](#), *Community Care*, 27 January 2016

<sup>297</sup> House of Commons Education Committee, [Social Work Reform – Third Report of Session 2016-17](#), HC 201, 13 July 2016, para.93

<sup>298</sup> Department for Education and Department of Health, [Social Work Regulatory Reform – Update to Policy Statement](#), November 2016, p.6

<sup>299</sup> Department for Education and Department of Health, [Regulating Social Workers: Policy Statement](#), 27 June 2016, para.76

reference group’ to assist in the planning for the new regulator, establishing new professional standards and setting new education and training requirements.<sup>300</sup>

### Lords’ concerns

A number of Lords were critical of the Government’s apparent lack of consultation, particularly with the social work sector. At Grand Committee stage the Opposition Spokesperson, Lord Hunt, said:

...The chief inspector of social work for children said at the meeting last week that there had been consultation. We have had a letter – which has already been quoted – under the auspices of the British Association of Social Workers, on behalf of other social work organisations, which says that this proposal was made:

*“without any prior consultation or dialogue with the social work sector on the content of the Bill”.*<sup>301</sup>

In the joint statement on the Bill the British Association of Social Workers and others called for greater collaboration between the Government and key stakeholders:

Government cannot create a profession. If regulation is to change, we want the case for change to be made with the profession, and if change is needed, it should be founded on a proper collaboration between social workers in practice, social work educators, the representative independent professional body and all other key stakeholders from across social work and government.<sup>302</sup>

### The Government’s response

In a letter published prior to Lords Report Stage, the Minister, Lord Nash, said that the Government had had “several discussions with representatives from key groups” over the Summer and had “moved to establish an Advisory Group... to help us as we work through the detail going forward”.<sup>303</sup>

[Government Amendments 71P and 71T](#), agreed at Lords Report Stage, would require the new regulator to consult with appropriate bodies before setting professional, education and training standards.

## 5.10 Social work policy fragmentation

### Lords’ concerns

As set out above, the Government’s June 2016 policy statement proposed that the new regulator be set up as an Executive Agency of the DfE, but with joint governance between DfE and the Department of Health (DH).<sup>304</sup>

<sup>300</sup> Department for Education and Department of Health, [Regulating Social Workers: Policy Statement](#), 27 June 2016, para.77

<sup>301</sup> [GC Deb 13 July 2016 c122](#)

<sup>302</sup> The British Association of Social Workers, [Joint Statement on the Children and Social Work Bill](#), 1 July 2016

<sup>303</sup> [Letter from the Parliamentary Under-Secretary of State for the Department for Education, Lord Nash, to Lords](#), 1 November 2016

<sup>304</sup> Department for Education and Department of Health, [Regulating Social Workers: Policy Statement](#), 27 June 2016, paras.85-86

Several Lords expressed concerns that the DfE would take lead responsibility for the regulation and improvement of social workers who work with adults. In Lords Grand Committee, the Shadow Spokesperson for Health, Lord Hunt, said:

... those of us who are mainly health orientated find it quite extraordinary that at a time when health and social care are increasingly being integrated, adult social care regulation is being taken away from a health and care regulatory function and being put under the auspices of the Secretary of State for Education, who clearly has no remit or interest in adult social care.<sup>305</sup>

This was expanded on by Lord Warner:

The Minister may not realise what an important part of government policy the integration of adult social care with the NHS is and that work is going on in other bits of government to see whether, in the future, there might need to be people who can work across that adult social care and NHS border. Meanwhile, back at the ranch of DfE, all this is being dealt with by a set of officials who do not have any expertise, if I may say so, in adult social care...<sup>306</sup>

## Stakeholder concerns

The concerns expressed by the Lords reflected broader stakeholder views that the social work policy split between DH (responsible for adult social care) and DfE (responsible for children and families social care) was detrimental to the profession.<sup>307</sup>

In written evidence to the Education Select Committee the Association of Professors of Social Work (APSW) said they were “concerned that in the last three years there has been an increasing lack of clarity about the direction of government policy, with key departments (DfE and DH) appearing to diverge on a number of issues...”.<sup>308</sup> The British Association of Social Workers suggested that the social work split into “children” and “adults” does not reflect service local government delivery arrangements, or the imperative for all social workers to be able to provide a level of service to people of all ages.<sup>309</sup>

In their report the Committee said that it was:

... concerned that the DfE and DH agendas are not coordinated, and the profession is being pulled in two different directions. There is a pressing need for greater coordination within Government on the future of social work in England. The splitting of the profession into two separate strands has been unhelpfully divisive...<sup>310</sup>

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<sup>305</sup> [GC Deb 13 July 2016 c136](#)

<sup>306</sup> [GC Deb 13 July 2016 c136](#)

<sup>307</sup> House of Commons Education Committee, *Social Work Reform – Third Report of Session 2016-17*, HC 201, 13 July 2016, paras 17-18

<sup>308</sup> [Written submission submitted by the Association of Professors of Social Work to the Education Select Committee \(SWR0013\)](#), March 2016, Executive Summary

<sup>309</sup> [Written evidence submitted by the British Association of Social Workers to the House of Commons Education Committee inquiry into Social Work Reform \(SWR0029\)](#), March 2016

<sup>310</sup> House of Commons Education Committee, *Social Work Reform – Third Report of Session 2016-17*, HC 201, 13 July 2016, paras 22-23.

In its October 2016 response to the Committee the Government outlined the structures in place to support cross-departmental working.<sup>311</sup>

### The Government's revised proposal

At Lords Report stage the Government set out its revised proposal to establish the new regulator as an independent Non-Departmental Public Body. The revised accountability arrangements were set out in the accompanying updated policy statement as follows:

As an NDPB, there will be clear separation between the regulator and ministers and a clear role for government in holding the new regulator to account for overall delivery of its functions. This will be done jointly between the Department for Education and the Department for Health through regular accountability meetings monitoring delivery against the regulator's strategic objectives as set out in its remit letter and business plan.<sup>312</sup>

This was agreed and added to the Bill.

## 5.11 Future review of social work regulation

At Lords Report Stage the Opposition spokesman, Lord Warner, moved [Amendment 117](#). This would have required:

- an independent review of the effectiveness of social work regulation, including consultation with the social work profession, to be carried out five years after the legislation coming into force;
- a report of the review to be laid before Parliament, together with a response from Government; and
- the Government to have full regard of the review and take action accordingly.

Lord Warner explained that this was intended to provide an opportunity to review progress with the new regulatory arrangements, and assess whether they were achieving their objectives. It would also provide an opportunity to take stock of the broader regulatory reform of other health and social care professions.<sup>313</sup> Lord Hunt further emphasised the importance of ensuring consistency between social work regulation and the wider health and social care regulatory reform agenda.<sup>314</sup>

The Minister, Lord Nash, welcomed the intention behind Amendment 117 and committed to tabling an amendment at Third Reading to require an independent review of the new regulator within five years of

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<sup>311</sup> House of Commons Education Committee, [Social work reform: Government Response to the Committee's Third Report of Session 2016-17](#), HC 733, 13 October 2016, p.6

<sup>312</sup> Department for Education and Department of Health, [Social Work Regulatory Reform – Update to Policy Statement](#), November 2016, p.4

<sup>313</sup> These reforms were informed by the independent regulatory reviews carried out by the Law Commissions in 2014 and by the Professional Standards Authority for Health and Social Care (PSA) in 2015.

<sup>314</sup> [HC Deb 8 November 2016 cc1112–1113](#)

it becoming operational. On that basis Amendment 117 was withdrawn.<sup>315</sup>

At Third Reading, Lord Nash tabled [Amendment 11](#). He explained that the amendment:

... ensures that an independent review is undertaken within five years from the point that Social Work England becomes fully operational. The review will be able to cover all aspects of Part 2 of the Bill. Those undertaking the review must consult with representatives of the social work profession and anyone else that they consider appropriate. Following the review and discussions with Members in the other place and noble Lords, the Secretary of State for Education and the Secretary of State of Health will be required to publish a response to the review.<sup>316</sup>

Amendment 11 was agreed and added to the Bill.

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<sup>315</sup> [HC Deb 8 November c1114](#)

<sup>316</sup> [HC Deb 23 November 2013 c1963](#)

## 6. Matters not included in Bill 99

### 6.1 Local authorities opt-out of children's legislation

The Bill as presented to the Lords for Second Reading (HL Bill 1) included five clauses under the heading "Children's social care: different ways of working". In summary, these clauses as presented in HL Bill 1 would have allowed the Secretary of State, on the application of a local authority, to exempt a local authority from a requirement imposed by children's social care legislation, as specified in the Bill, or to modify how the requirement applied, by regulations.

During Lords Second Reading the Minister, Lord Nash, explained, "The Bill will give local authorities an opportunity to test new ways of working in a safe and managed environment so that they can tailor their services specifically to the needs of children rather than slavishly following a set of one-size-fits-all rules", adding:

Clauses 15 to 19 will allow local authorities and agencies discharging care functions on their behalf to explore and develop more effective ways of working in children's social care. The use of this provision will be entirely voluntary and locally led. It will allow a local authority to apply to the Secretary of State for a disapplication of its statutory responsibilities in respect of children's services for a specified period so that it can test out better ways of working, either more efficiently or to improve the quality of support and raise children's outcomes. The new arrangements will give high-performing local authorities an opportunity to operate more flexibly and trial more effective ways of delivering children's services.

There is a consensus stemming back to the landmark *Munro Review of Child Protection* that over-regulation gets in the way of good social work practice. Addressing this is central to our strategy to reform children's social care and this new power to innovate will enable us to carefully pilot and evaluate deregulatory measures. It mirrors a similar existing power for schools. We recognise that any relaxation of statutory requirements should not be undertaken lightly. We have therefore built in a number of significant safeguards into the application process to make sure that the use of the new power is properly scrutinised and that the safety of children is always ensured. These include time-limiting the length of the pilots and making their approval subject to regulation using affirmative procedures wherever the proposal is to change the application of primary legislation. We have also included requirements to consult on the proposals with Ofsted and the Children's Commissioner. These plans sit alongside our £200 million extension to the children's social care innovation programme—a hugely successful programme involving partnerships between local authorities and charities, which, like the Pause projects, have already had life-transforming effects.<sup>317</sup>

However, the proposal was met with resistance. Lord Watson, for the Opposition, in relation to the proposals, asked "what is the problem it is designed to address?", adding that while the Labour Party "support

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<sup>317</sup> [HC Deb 14 June 2016 cc1112 and 1115–1116](#)

innovation if it drives up outcomes for children and standards in local authorities” innovation “can take place very effectively within local authorities, as Leeds has recently demonstrated”.

He added that “we strongly believe that child protection services and, indeed, wider children’s social care should not be run for profit and we are concerned that this clause could be a Trojan horse”, and contested that the Government had “failed to justify such a wide-ranging and wholesale change” which, in his view, was “too wide ranging and without adequate safeguards to protect children and young people if plans to innovate go wrong”.<sup>318</sup>

For the Liberal Democrats, Baroness Pinnock said that the associated regulations “are vagueness itself, which raises many questions as to the intent, save that of enabling, ‘better outcomes ... or ... the same outcomes more efficiently’. That statement, in our opinion, has all the hallmarks of a Government bent on permitting the outsourcing of children’s services”.<sup>319</sup>

Baroness Massey, a cross-bench Peer, asked the Minister to “explain to the House why there is a need to weaken the entitlements of children and families in order to facilitate service innovation”, while the Bishop of Durham said “the basic assurance of safety and the priorities around safety, rights and well-being, which are enshrined particularly in the *Children Act 1989*, must be preserved, and both the degree of consultation and the level of parliamentary scrutiny of any arrangements for local exemptions must have regard to the seriousness of the risks involved”.<sup>320</sup>

At Lords Grand Committee Stage, a number of amendments were tabled to the clauses. Lord Watson contended that “the Government have not made a case as to why Clause 15 is necessary. The Minister needs to explain to noble Lords precisely what problem this proposal is designed to address”.<sup>321</sup>

Lord Nash restated that the Government had “no intention of revisiting the settled position on profit-making in children’s social care or of using Clause 15 to circumvent that position”, arguing that:

At the heart of this power to test new ways of working is the intention to achieve better outcomes for children and young people. This unwavering focus is at the very core of the department’s agenda to drive innovation and improvement. More significantly, the push to remove procedural barriers to better ways of working is in direct response to what local authorities are telling us young people are saying to them. They want things done differently.<sup>322</sup>

One technical amendment was agreed.

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<sup>318</sup> [HC Deb 14 June 2016 c1120](#)

<sup>319</sup> [HC Deb 14 June 2016 c1124](#)

<sup>320</sup> [HC Deb 14 June 2016 cc1145 and 1155](#)

<sup>321</sup> [GC Deb 11 July 2016 c40](#)

<sup>322</sup> [GC Deb 11 July 2016 c49](#)



At Lords Report Stage, Lord Ramsbotham, the former Chief Inspector of Prisons, tabled amendments to delete the clauses (which were now numbered 29 to 33). Speaking to his amendments, he said:

I submit that Clauses 29 to 33 amount to nothing less than the subversion of Parliament's constitutional position. It is not only wrong but totally unnecessary, in view of existing arrangements, to process proposed innovation because new ways of working can already be tested within the existing legal and regulatory frameworks, as my noble friend Lord Warner will explain. Therefore I contend that, however outwardly reasonable the processes proposed by the Government may seem, they do not alter the need to leave out Clauses 29 to 33 of the Bill for reasons of constitutional and legal principle, as I will attempt to explain.<sup>323</sup>

Both Labour and the Liberal Democrats supported the amendments.<sup>324</sup>

The House divided on the matter, and against the view of the Government agreed to remove clause 29 by 245 votes to 213. Subsequent amendments to remove associated clauses were agreed without division.<sup>325</sup>

## 6.2 UN Convention on the Rights of the Child

At Lords Grand Committee Stage Baroness Walmsley tabled a new clause in relation to the United Nations Convention on the Rights of the Child (UNCRC) as follows:

- (1) Public authorities must, when exercising any function relating to safeguarding and promoting the welfare of children, have due regard to the United Nations Convention on the Rights of the Child and its Optional Protocols.
- (2) Any person whose functions are of a public nature must, in the exercise of any function relating to safeguarding and promoting the welfare of children, have due regard to the rights set out in the United Nations Convention on the Rights of the Child and its Optional Protocols.
- (3) Public authorities must publish a report, in a format accessible to children, on the steps they have taken to meet the requirement in subsection (1), every five years.
- (4) The references in this section to the United Nations Convention on the Rights of the Child are to the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989 (including any Protocols to that Convention which are in force in relation to the United Kingdom), subject to any reservations, objections or interpretative declarations by the United Kingdom that are for the time being in force.

The amendment was not moved.

At Report Stage, the amendment was tabled again by Baroness Walmsley, along with an alternative new clause by Baroness Hamwee that would have meant that "a public authority must, in the exercise of its functions relating to safeguarding and the welfare of children, have

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<sup>323</sup> [HL Deb 8 November 2016 cc1055–1056 and 1057](#)

<sup>324</sup> [HL Deb 8 November 2016 cc1061 and 1064](#)

<sup>325</sup> [HL Deb 8 November 2016 cc1078–1082](#)

due regard to the United Nations Convention on the Rights of the Child”.

Baroness Walmsley said that “both amendments would require public authorities to determine the impact of decision-making on the rights of children and provide a framework for public service delivery in relation to children compatible with their convention rights”.<sup>326</sup>

In reply, the Minister said that “this Government recognise the importance of the UNCRC and are fully committed to giving due consideration to the articles when making new policies and legislation”, but said:

We believe that the way to promote children’s rights is for strong practitioners locally to listen to children and to act in ways which best meet their needs. A duty alone will not do that, and risks practitioners focusing on the wording of the legislation rather than on practice. The Government will consider how best to strengthen compliance with the convention in a way which promotes better practice and a culture of focusing on children’s rights.<sup>327</sup>

Baroness Walmsley withdrew her amendment after the debate, and Baroness Hamwee’s amendment was not moved.

Lord Woolf tabled Baroness Hamwee’s amendment again at Third Reading, and in reply Lord Nash set out the relevant legislation and noted that “in 2013, we issued statutory guidance to directors of children’s services which requires them to have regard to the general principles of the UNCRC and ensure that children and young people are involved in the development and delivery of local services”.<sup>328</sup>

The amendment was again withdrawn.

The Library has produced a briefing paper on the UN CRC, entitled [UN Convention on the Rights of the Child: a brief guide](#) (CBP 7721).

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<sup>326</sup> [HL Deb 8 November 2016 c1082](#)

<sup>327</sup> [HL Deb 8 November 2016 c1088–1089](#)

<sup>328</sup> [HL Deb 23 November 2016 c1961](#)

## 7. Territorial extent

While the Bill extends to England and Wales, most of the Bill's provision apply to England only, although a handful apply to England and Wales, and also Scotland.

Specifically:

- with one exception, the whole of Part I of the Bill (clauses 1 to 32) extends only to England and Wales, but:
  - clause 1 to 32 apply to England
  - only clauses 8 and 9 (adoption) also apply to Wales
- the one exception is clause 31 (employment law and whistleblowing), which extend to England, Wales and Scotland and apply in all three countries;
- the whole of Part 2 (clauses 33 to 57) extend to England and Wales but apply to England only;
- for Part 3:
  - clause 58 extends to England and Wales but applies to England only;
  - clauses 69 to 64 extend and apply to England, Wales and Scotland.

## 8. Financial implications of the Bill

The Government's *Impact Assessment* for the Bill as it was introduced to the Lords for Second Reading included the following costings:

- Overall additional total costs to local authorities for each year: Educational achievement of previously looked after children – None - we estimate costs of up to £50K (although more likely approximately £30K) per local authority per year as a result of the virtual school heads provision;
- “Overall additional total costs to local authorities for each year: Support for care leavers – For immediate national implementation: £4 million in 2017-18 and £8 million in each subsequent year for the rest of the Spending Review Period”.<sup>329</sup>

The Impact Assessment did not include costings for:

- the establishment of the national Child Safeguarding Practice Review Panel;
- the introduction of local arrangements for safeguarding and promoting the welfare of children, or child death reviews, as these measures were included in the Bill as presented for Second Reading in the Lords;

the establishment of a new social work regulator.

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<sup>329</sup> Department for Education, [Children and social work Bill – Impact assessments](#), May 2016, pp27, 28,

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