

Children and Social Work Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Education, are published separately as HL Bill 1 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Nash has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Children and Social Work Bill [HL] are compatible with the Convention rights.

Children and Social Work Bill [HL]

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TO

Make provision about looked after children; to make other provision in relation to the welfare of children; and to make provision about the regulation of social workers.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

CHILDREN

CHAPTER 1

LOOKED AFTER CHILDREN

Corporate parenting principles for English local authorities 5

1 Corporate parenting principles

- (1) A local authority in England must, in carrying out functions in relation to the children and young people mentioned in subsection (2), have regard to the need—
- (a) to act in the best interests, and promote the health and well-being, of those children and young people; 10
 - (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; 15
 - (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; 20

- (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.
- (2) The children and young people mentioned in this subsection are— 5
- (a) children who are looked after by a local authority, within the meaning given by section 22(1) of the Children Act 1989;
- (b) relevant children within the meaning given by section 23A(2) of that Act (certain 16 and 17 year olds who are no longer in care);
- (c) persons aged under 25 who are former relevant children within the meaning given by section 23C(1) of that Act. 10
- (3) In this section
- “local authority in England” means—
- (a) a county council in England;
- (b) a district council; 15
- (c) a London borough council;
- (d) the Common Council of the City of London (in their capacity as a local authority);
- (e) the Council of the Isles of Scilly;
- (f) a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009; 20
- “relevant partners”, in relation to a local authority, has the meaning given by section 10(4) of the Children Act 2004.
- (4) A local authority in England must have regard to any guidance given by the Secretary of State as to the performance of the duty under subsection (1). 25

Care leavers in England

2 Local offer for care leavers

- (1) A local authority in England must publish information about—
- (a) services which the local authority offers for care leavers as a result of its functions under the Children Act 1989; 30
- (b) other services which the local authority offers that may assist care leavers in, or in preparing for, adulthood and independent living.
- (2) For the purposes of subsection (1), services which may assist care leavers in, or in preparing for, adulthood and independent living include services relating to— 35
- (a) health and well-being;
- (b) education and training;
- (c) employment;
- (d) accommodation; 40
- (e) participation in society.
- (3) Where it considers appropriate, a local authority in England must publish information about services for care leavers offered by others which the local authority has power to offer as a result of its functions under the Children Act 1989. 45

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- (4) Information required to be published by a local authority under this section is to be known as its “local offer for care leavers”.
- (5) A local authority must update its local offer for care leavers from time to time, as appropriate.
- (6) Before publishing its local offer for care leavers (or any updated version) a local authority must consult relevant persons about which of the services offered by the local authority may assist care leavers in, or in preparing for, adulthood and independent living. 5
- (7) In this section
“care leavers” means – 10
- (a) eligible children within the meaning given by paragraph 19B of Schedule 2 to the Children Act 1989;
 - (b) relevant children within the meaning given by section 23A(2) of that Act;
 - (c) persons aged under 25 who are former relevant children within the meaning given by section 23C(1) of that Act; 15
 - (d) persons qualifying for advice and assistance within the meaning given by section 24 of that Act;
- “local authority in England” means –
- (a) a county council in England; 20
 - (b) a district council;
 - (c) a London borough council;
 - (d) the Common Council of the City of London (in their capacity as a local authority);
 - (e) the Council of the Isles of Scilly; 25
 - (f) a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009;
- “relevant persons”, in relation to a local authority, means such care leavers and other persons as appear to the local authority to be representative of care leavers in its area. 30
- (8) In paragraph 1(2)(a) of Schedule 2 to the Children Act 1989 (information to be published by a local authority), in paragraph (i), for “, 23B to 23D, 24A and 24B” substitute “and 23D”.
- (9) In section 30 of the Children and Families Act 2014 (local offer for children and young people who have special educational needs or a disability), for “local offer”, in each place it occurs (including the title), substitute “SEN and disability local offer”. 35
- 3 Advice and support on request**
- (1) The Children Act 1989 is amended as follows. 40
- (2) After section 23CZA insert –
- “23CZB England: further advice and support on request**
- (1) This section applies to a former relevant child if –
- (a) he or she has reached the age of 21 but not the age of 25, and

-
- (b) a local authority in England had duties towards him or her under section 23C (whether or not some of those duties continue to subsist by virtue of subsection (7) of that section).
- (2) If the former relevant child requests advice and support under this section, the local authority has the following duties. 5
- (3) The local authority must provide the former relevant child with a personal adviser until the former relevant child –
- (a) reaches the age of 25, or
 - (b) if earlier, informs the local authority that he or she no longer wants a personal adviser. 10
- (4) The local authority must –
- (a) carry out an assessment in relation to the former relevant child under subsection (5), and
 - (b) prepare a pathway plan for the former relevant child.
- (5) An assessment under this subsection is an assessment of the needs of the former relevant child with a view to determining –
- (a) whether any services offered by the local authority (under this Act or otherwise) may assist in meeting his or her needs, and
 - (b) if so, what advice and support it would be appropriate for the local authority to provide for the purpose of helping the former relevant child to obtain those services. 15
- (6) The local authority must provide the former relevant child with advice and support that it would be appropriate to provide as mentioned in subsection (5)(b). 20
- (7) A local authority in England must take steps to inform a former relevant child –
- (a) of any right that the former relevant child has to make a request to the local authority under subsection (2), and
 - (b) of the effect of making a request. 25
- (8) In this section “former relevant child” has the meaning given by section 23C(1).” 30
- (3) In section 23CA (further assistance to pursue education or training) for subsection (2) substitute –
- “(2) It is the duty of the responsible local authority to provide a personal adviser for a person to whom this section applies.” 35
- (4) In section 23D (personal advisers) after subsection (2) insert –
- “(3) Where a local authority in England ceases to be under a duty to provide a personal adviser for a person under any provision of this Part, that does not affect any other duty under this Part to provide a personal adviser for the person. 40
- (4) Where a local authority in England has more than one duty under this Part to provide a personal adviser for a person, each duty is discharged by the provision of the same personal adviser (the local authority are not required to provide more than one personal adviser for the person).” 45

- (5) Section 23E (pathway plans) is amended as follows.
- (6) In subsection (1) (contents of pathway plan), after paragraph (a) (but before the “and” at the end) insert –
- “(aa) in the case of a plan prepared under section 23CZB, the advice and support that the local authority intend to provide;” 5
- (7) After subsection (1) insert –
- “(1ZA) A local authority may carry out an assessment under section 23CZB(5) of a person’s needs at the same time as any assessment of the person’s needs is made under section 23CA(3).”
- (8) In subsection (1A) (statutory assessments that may be carried out at the same time as assessment relating to a pathway plan) after “23B(3)” insert “, 23CZB(5)”. 10
- (9) In subsection (1B) (regulations about assessments) after “23B(3)” insert “, 23CZB(5)”.
- (10) In subsection (1D) (pathway plans to be kept under review) after “23B” insert “, 23CZB”. 15

Educational achievement in England

4 Duty of local authority in relation to previously looked after children

Before section 23ZA of the Children Act 1989 (and the italic heading before it) insert – 20

“Educational achievement of previously looked after children

23ZZA Information and advice for promoting educational achievement

- (1) A local authority in England must make advice and information available in accordance with this section for the purpose of promoting the educational achievement of each relevant child educated in their area. 25
- (2) The advice and information must be made available to –
- (a) the child’s parents,
- (b) the member of staff at the child’s school designated under section 20A of the Children and Young Persons Act 2008 or by virtue of section 2E of the Academies Act 2010, and 30
- (c) any other person that the local authority consider appropriate.
- (3) A local authority in England may do anything else that they consider appropriate with a view to promoting the educational achievement of relevant children educated in their area. 35
- (4) A local authority in England must appoint at least one person for the purpose of discharging the duty imposed by subsection (1).
- (5) The person appointed for that purpose must be an officer employed by the authority or another local authority in England.

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- (6) In this section “relevant child” means a child who has previously been looked after by the local authority or another local authority but has ceased to be so looked after as a result of—
- (a) a child arrangements order which includes arrangements relating to—
 - (i) with whom the child is to live, or
 - (ii) when the child is to live with any person,
 - (b) a special guardianship order, or
 - (c) an adoption order within the meaning given by section 46(1) of the Adoption and Children Act 2002.
- (7) For the purposes of this section a child is educated in a local authority’s area if—
- (a) the child is receiving early years provision secured by the local authority under section 7(1) of the Childcare Act 2006, or
 - (b) the child is of compulsory school age and—
 - (i) the child attends a school in the local authority’s area, or
 - (ii) if the child does not attend school, the child receives all or most of his or her education in the local authority’s area.”
- 5 Maintained schools: staff member for previously looked after pupils**
- After section 20 of the Children and Young Persons Act 2008 insert—
- “20A Designated staff member for previously looked after pupils**
- (1) The governing body of a maintained school in England must—
 - (a) designate a member of the staff at the school (the “designated person”) as having responsibility for promoting the educational achievement of registered pupils within subsection (2), and
 - (b) ensure that the designated person undertakes appropriate training and has regard to any guidance issued by the Secretary of State.
 - (2) A registered pupil is within this subsection if the pupil was looked after by a local authority but has ceased to be looked after by them as a result of—
 - (a) a child arrangements order (within the meaning given by section 8(1) of the 1989 Act) which includes arrangements relating to—
 - (i) with whom the child is to live, or
 - (ii) when the child is to live with any person,
 - (b) a special guardianship order (within the meaning given by section 14A(1) of the 1989 Act), or
 - (c) an adoption order (within the meaning given by section 46(1) of the Adoption and Children Act 2002).
 - (3) The Secretary of State may by regulations require the governing body of a maintained school in England to ensure that the designated person has qualifications or experience (or both) prescribed by the regulations.

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- (4) In exercising its functions under this section the governing body of a maintained school in England must have regard to any guidance issued by the Secretary of State.
- (5) For the purposes of this section a person is “looked after” by a local authority if the person is looked after by a local authority for the purposes of the 1989 Act. 5
- (6) In this section –
 “maintained school” has the meaning given by section 39(1) of the Education Act 2002;
 “registered pupil” has the meaning given by section 434(5) of the Education Act 1996.” 10
- 6 Academies: staff member for looked after and previously looked after pupils**
- (1) After section 2D of the Academies Act 2010 insert –
- “2E Provision about staff member for looked after and previously looked after pupils** 15
- (1) An Academy agreement must include provision requiring the proprietor of the Academy –
- (a) to designate a member of staff at the Academy (the “designated person”) as having responsibility for promoting the educational achievement of relevant pupils at the Academy, 20
- (b) to ensure that the designated person undertakes appropriate training and has regard to any guidance issued by the Secretary of State, and
- (c) in complying with provision included in the agreement by virtue of paragraph (a) or (b), to have regard to any guidance issued by the Secretary of State. 25
- (2) An Academy agreement made before the day on which section 6 of the Children and Social Work Act 2016 (which inserts this section) comes fully into force is to be treated as if it included the provision required by subsection (1). 30
- (3) The Secretary of State may by regulations –
- (a) require an Academy agreement to include provision requiring the proprietor of the Academy –
- (i) to ensure that a designated person has qualifications or experience (or both) prescribed by the regulations, and 35
- (ii) in complying with provision included in the agreement by virtue of sub-paragraph (i), to have regard to any guidance issued by the Secretary of State;
- (b) provide that an Academy agreement made before the day on which the regulations come into force is to be treated as if it included any provision required under paragraph (a). 40
- (4) In this section –
 “pupil” –
- (a) in relation to an Academy school or an alternative provision Academy, means a registered pupil at the Academy; 45

- (b) in relation to a 16 to 19 Academy, means a person receiving education at the Academy;
- “relevant pupil”, in relation to Academy, means a pupil at the Academy who—
- (a) is looked after by a local authority, or 5
- (b) was looked after by a local authority but has ceased to be so looked after as a result of a relevant order;
- “relevant order” means—
- (a) a child arrangements order (within the meaning given by section 8(1) of the Children Act 1989) which includes arrangements relating to— 10
- (i) with whom a child is to live, or
- (ii) when a child is to live with any person,
- (b) a special guardianship order (within the meaning given by section 14A(1) of the Children Act 1989), or 15
- (c) an adoption order (within the meaning given by section 46(1) of the Adoption and Children Act 2002).
- (5) For the purposes of this section a person is “looked after” by a local authority if the person is looked after by a local authority for the purposes of the Children Act 1989. 20
- (6) For the purposes of section 569 of EA 1996 (as applied by section 17(4)), regulations under subsection (3)(b) are to be treated as if the statutory instrument containing them fell within subsection (2A) of that section (regulations subject to affirmative procedure).”
- (2) After section 2 of that Act insert— 25

“Provision to be included in Academy agreements”.

7 **Maintained schools: guidance for staff member for looked after pupils**

In section 20 of the Children and Young Persons Act 2008 (designated staff member for looked after pupils) after subsection (2) insert—

- “(2A) If the school is in England, the governing body must ensure that the designated person has regard to any guidance issued by the Secretary of State.” 30

Care and adoption proceedings in England and Wales

8 **Care orders: permanence provisions**

In section 31 of the Children Act 1989 (care and supervision orders), for subsection (3B) substitute— 35

- “(3B) For the purposes of subsection (3A), the permanence provisions of a section 31A plan are—
- (a) such of the plan’s provisions setting out the long-term plan for the upbringing of the child concerned as provide for any of the following— 40
- (i) the child to live with any parent of the child’s or with any other member of, or any friend of, the child’s family;

- (ii) adoption;
 - (iii) long-term care not within sub-paragraph (i) or (ii);
 - (b) such of the plan’s provisions as set out any of the following –
 - (i) the impact on the child concerned of any harm that he or she suffered or was likely to suffer; 5
 - (ii) the current and future needs of the child (including needs arising out of that impact);
 - (iii) the way in which the long-term plan for the upbringing of the child would meet those current and future needs.”
- 9 Adoption: duty to have regard to relationship with adopters 10**
- (1) Section 1 of the Adoption and Children Act 2002 (matters to which court is to have regard in coming to a decision relating to the adoption of a child) is amended as follows.
 - (2) After subsection (7) insert –
 - “(7A) For the purposes of this section as it applies in relation to a decision by a court, or by an adoption agency in England – 15
 - (a) references to relationships are not confined to legal relationships,
 - (b) references to a relative, in relation to a child, include –
 - (i) the child’s mother and father, and 20
 - (ii) any person who is a prospective adopter with whom the child is placed.
 - (7B) In this section “adoption agency in England” means an adoption agency that is –
 - (a) a local authority in England, or 25
 - (b) a registered adoption society whose principal office is in England.”
 - (3) In subsection (8) (meaning of “relative” etc), in the words before paragraph (a), after “section” insert “as it applies in relation to a decision by an adoption agency in Wales”. 30

CHAPTER 2

OTHER PROVISION RELATING TO CHILDREN IN ENGLAND

Combined authority functions relating to children

10 Power to secure proper performance

- (1) In section 50 of the Children Act 2004 (powers of the Secretary of State to secure proper performance etc), after subsection (6) insert –
 - “(7) If any functions of a local authority in England which are specified in subsection (2) are exercisable by a combined authority by virtue of section 105 of the Local Democracy, Economic Development and Construction Act 2009 – 40

- (a) a reference in this section to a local authority includes a reference to the combined authority, and
- (b) a reference in this section to functions specified in subsection (2) is, in relation to the combined authority, to be read as a reference to those functions so far as exercisable by the combined authority.” 5
- (2) In section 15 of the Childcare Act 2006 (powers of the Secretary of State to secure proper performance etc), after subsection (6) insert –
- “(6A) If any functions of an English local authority under this Part are exercisable by a combined authority by virtue of section 105 of the Local Democracy, Economic Development and Construction Act 2009 – 10
- (a) a reference in any of subsections (3) to (6) to an English local authority includes a reference to the combined authority, and
- (b) a reference in those subsections to functions under this Part is, in relation to the combined authority, to be read as a reference to those functions so far as exercisable by the combined authority.” 15

Serious child safeguarding cases

11 Child Safeguarding Practice Review Panel

In the Children Act 2004, after section 16 insert – 20

“Child Safeguarding Practice Review Panel

16A Child Safeguarding Practice Review Panel

- (1) The Secretary of State must establish a panel to be known as the Child Safeguarding Practice Review Panel.
- (2) The Secretary of State may make any arrangements that the Secretary of State considers appropriate for the establishment of the Panel in accordance with this section. 25
- (3) The Panel is to consist of a chair and members appointed by the Secretary of State.
- (4) A person may be appointed for a particular period or otherwise. 30
- (5) The Secretary of State may remove the chair or a member of the Panel if satisfied that the chair or member –
- (a) has become unfit or unable to discharge his or her functions properly, or
- (b) has behaved in a way that is not compatible with continuing in office. 35
- (6) The arrangements that may be made by the Secretary of State under subsection (2) include arrangements about –
- (a) the Panel’s proceedings;
- (b) annual or other reports. 40

- (7) The Secretary of State may provide staff, facilities or other assistance to the Panel (and the arrangements that may be made under this section include arrangements about those matters).
- (8) The Secretary of State may pay remuneration or expenses to the chair and members of the Panel.”

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12 Functions of the Panel

In the Children Act 2004, after section 16A (inserted by section 11), insert –

“16B Functions of the Panel

- (1) The functions of the Child Safeguarding Practice Review Panel are, in accordance with arrangements made by the Secretary of State –
 - (a) to identify serious child safeguarding cases in England which raise issues that are complex or of national importance, and
 - (b) where they consider it appropriate, to arrange for those cases to be reviewed under their supervision.10
- (2) The purpose of a review under subsection (1)(b) is to ascertain what (if any) lessons can be learned from the case about the way in which local authorities or others should work to safeguard children. 15
- (3) Where the Panel arrange for a case to be reviewed under their supervision, they must –
 - (a) ensure that the reviewer provides a report on the outcome of the review; 20
 - (b) ensure –
 - (i) that the reviewer makes satisfactory progress, and
 - (ii) that the report is of satisfactory quality;
 - (c) provide the report to the Secretary of State. 25
- (4) The Panel must publish the report, unless they consider it inappropriate to do so.
- (5) If the Panel consider it inappropriate to publish the report, they must publish any information relating to the lessons to be learned from the case that they consider it appropriate to publish. 30
- (6) The arrangements under subsection (1) may include arrangements about –
 - (a) criteria to be taken into account by the Panel in determining whether serious child safeguarding cases raise issues that are complex or of national importance; 35
 - (b) eligibility for appointment as a reviewer;
 - (c) the selection process for appointment of a reviewer;
 - (d) the person who is to select a reviewer;
 - (e) the supervisory powers of the Panel in relation to a reviewer;
 - (f) removal of a reviewer; 40
 - (g) payments of remuneration or expenses to a reviewer by the Secretary of State;
 - (h) the procedure for a review;
 - (i) the form and content of a report;

- (j) the time when a report is to be provided to the Secretary of State, or published.
- (7) The Panel must have regard to any guidance given by the Secretary of State in connection with functions conferred by this section.
- (8) Guidance given by the Secretary of State may include guidance about – 5
- (a) circumstances in which it may be appropriate for a serious child safeguarding case to be reviewed;
- (b) matters to be taken into account in deciding whether a review is making satisfactory progress or whether a report is of satisfactory quality. 10
- (9) In this section –
- a “reviewer” means any one or more persons appointed to review a case on behalf of the Panel;
- “serious child safeguarding cases” means cases in which –
- (a) abuse or neglect of a child is known or suspected by a local authority or another person exercising functions in relation to children, and 15
- (b) the child has died or been seriously harmed;
- “serious harm” includes serious or long-term impairment of mental health or intellectual, emotional, social or behavioural development.” 20

13 Events to be notified to the Panel

In the Children Act 2004, after section 16B (inserted by section 12), insert –

“16C Events to be notified to the Panel

- (1) A local authority in England must notify the Child Safeguarding Practice Review Panel of any of the following that occur in their area – 25
- (a) the death of a child who is known or suspected by the local authority to have been abused or neglected;
- (b) serious harm to a child who is known or suspected by the local authority to have been abused or neglected; 30
- (c) the death of a child who was looked after by a local authority (within the meaning given by section 22(1) of the Children Act 1989);
- (d) the death of a child in a regulated setting.
- (2) A local authority in England must have regard to any guidance given by the Secretary of State in connection with their functions under this section. 35
- (3) In this section –
- “regulated setting” has the meaning given by regulations to be made by the Secretary of State; 40
- “serious harm” has the meaning given by section 16B(9).”

14 Information

In the Children Act 2004, after section 16C (inserted by section 13), insert—

“16D Information

- (1) The Child Safeguarding Practice Review Panel may, for the purpose of enabling or assisting the performance of a function conferred by section 16B, request a person or body to provide information specified in the request to—
 - (a) the Panel,
 - (b) a reviewer, or
 - (c) another person or body specified in the request.
- (2) The person or body to whom a request under this section is made must comply with the request.
- (3) The information may be used by the Panel, reviewer, or other person or body to whom it is provided only for the purpose mentioned in subsection (1).
- (4) In this section “reviewer” means any one or more persons appointed to review a case on behalf of the Panel.”

Children's social care: different ways of working

15 Power to test different ways of working

- (1) The purpose of this section is to enable a local authority in England to test different ways of working with a view to achieving better outcomes under children’s social care legislation or achieving the same outcomes more efficiently.
- (2) The Secretary of State may by regulations, for that purpose—
 - (a) exempt a local authority in England from a requirement imposed by children’s social care legislation;
 - (b) modify the way in which a requirement imposed by children’s social care legislation applies in relation to a local authority in England.
- (3) The Secretary of State may make regulations under this section relating to a local authority in England only if asked to do so by that authority.
- (4) Regulations under this section may be made in relation to one or more local authorities in England.
- (5) Regulations under this section may include consequential modifications of children’s social care legislation.
- (6) Regulations under this section are subject to the negative resolution procedure if they only—
 - (a) relate to requirements imposed by subordinate legislation, or
 - (b) revoke earlier regulations under this section.
- (7) Any other regulations under this section are subject to the affirmative resolution procedure.
- (8) Subsection (3) does not apply to regulations under this section that only revoke earlier regulations under this section.

- (9) If regulations under this section are subject to the affirmative resolution procedure and would, but for this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, they are to proceed in that House as if they were not a hybrid instrument.
- 16 Duration** 5
- (1) Regulations under section 15 must specify a period at the end of which they lapse.
- (2) The period must not be longer than 3 years beginning with the day on which the regulations come into force.
- (3) But the Secretary of State may by further regulations under section 15 amend the specified period to extend it by up to 3 years. 10
- (4) The specified period may be extended on one occasion only.
- (5) Before extending the specified period the Secretary of State must lay a report before Parliament about the extent to which the regulations have achieved the purpose mentioned in section 15(1). 15
- (6) The Secretary of State may by regulations make transitional provision in connection with the lapsing of regulations under section 15.
- 17 Consultation**
- (1) Before asking the Secretary of State to make regulations under section 15 a local authority in England must consult such of its Local Safeguarding Children Board partners as it considers appropriate. 20
- (2) Before making regulations under section 15 the Secretary of State must consult—
- (a) the Children’s Commissioner,
 - (b) Her Majesty’s Chief Inspector of Education, Children’s Services and Skills, and
 - (c) any other person that the Secretary of State considers appropriate. 25
- (3) But no consultation is required where the regulations under section 15 only revoke earlier regulations under that section.
- (4) The Secretary of State may by regulations amend this section for the purposes of adding to those who must be consulted by a local authority in England or the Secretary of State. 30
- (5) Regulations under subsection (4) are subject to the negative resolution procedure.
- 18 Interaction with law about Secretary of State intervening** 35
- (1) Where a direction under section 497A(4) or (4A) of the Education Act 1996 as applied by section 50 of the Children Act 2004 (intervention by Secretary of State) is made in relation to any functions of a local authority in England—
- (a) regulations under section 15 may be made in relation to those functions as exercisable by the specified person, and
 - (b) the regulations may be made so as to apply in relation to the local authority if the direction ceases to be in force. 40

- (2) Sections 15(3) and 17(1) do not apply in relation to the making of regulations in reliance on subsection (1) if the specified person is the Secretary of State.
- (3) In relation to the making of regulations in reliance on subsection (1) in a case where the specified person is not the Secretary of State –
- (a) the request under section 15(3) must be made by the specified person (instead of by the local authority); 5
 - (b) the consultation under section 17(1) must be performed by the specified person (instead of by the local authority).
- (4) In this section “the specified person” means –
- (a) in a case where the direction mentioned in subsection (1) was given under section 497A(4) of the Education Act 1996 as applied, the person specified in the direction; 10
 - (b) in a case where the direction mentioned in subsection (1) was given under section 497A(4A) of the Education Act 1996 as applied, the Secretary of State or the person nominated by the Secretary of State. 15
- (5) In section 50 of the Children Act 2004 (intervention), in subsection (2) –
- (a) omit “and” at the end of paragraph (b);
 - (b) at the end of paragraph (c) insert “; and
 - (d) any function conferred by regulations under section 15 of the Children and Social Work Act 2016.” 20

19 Interpretation of sections 15 to 18

In sections 15 to 18 –

“children’s social care legislation” means –

- (a) any legislation specified in Schedule 1 to the Local Authority Social Services Act 1970 so far as relating to those under the age of 18; 25
- (b) sections 23C to 24D of the Children Act 1989, so far as not within paragraph (a);
- (c) the Children Act 2004, so far as not within paragraph (a);
- (d) any subordinate legislation under the legislation mentioned in paragraphs (a) to (c); 30

“local authority in England” means –

- (a) a county council in England;
- (b) a district council;
- (c) a London Borough council; 35
- (d) the Common Council of the City of London (in their capacity as a local authority);
- (e) the Council of the Isles of Scilly;
- (f) a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009; 40

“Local Safeguarding Children Board partner”, in relation to a local authority in England, means a person listed in section 13(3) of the Children Act 2004 in relation to the authority;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978. 45

PART 2

SOCIAL WORKERS ETC IN ENGLAND

CHAPTER 1

SOCIAL WORKER REGULATIONS

Power to regulate social workers 5

20 Social worker regulations

- (1) The Secretary of State may, for the purpose of regulating social workers in England, make regulations dealing with any of the matters authorised by this Chapter (“social worker regulations”).
- (2) Social worker regulations are subject to the affirmative resolution procedure. 10

Core content of social worker regulations

21 The regulator

- (1) Social worker regulations may appoint the Secretary of State or another person to be the regulator of social workers in England (“the regulator”).
- (2) Social worker regulations may establish a new body to be the regulator. 15

22 Registration

- (1) Social worker regulations may require the regulator to keep –
 - (a) a register of social workers in England,
 - (b) a register of people who are undertaking education or training in England to become social workers, or 20
 - (c) a combined register of the people mentioned in paragraphs (a) and (b).
- (2) The regulations –
 - (a) may provide for the appointment of a registrar, and
 - (b) may make other provision in connection with the keeping of a register.
- (3) For example, the regulations may make provision about – 25
 - (a) eligibility for registration or continued registration;
 - (b) categories of registration;
 - (c) the procedure for dealing with registration applications;
 - (d) expiry and renewal of entries;
 - (e) the content of the register; 30
 - (f) duties to provide information to the regulator;
 - (g) suspension or removal from the register;
 - (h) restoration of entries;
 - (i) appeals against decisions in connection with registration;
 - (j) publication of, or access to, the register or information contained in it; 35
 - (k) the procedure for considering, investigating or determining fitness to be or to remain registered (including standards of proof).

23 Restrictions on practice and protected titles

Social worker regulations may impose prohibitions or restrictions in connection with—

- (a) the carrying out of social work in England;
- (b) the use of titles or descriptions specified in the regulations; 5
- (c) the holding out of a person as qualified to carry out social work in England.

24 Professional standards

- (1) Social worker regulations may require the regulator or the Secretary of State to determine and publish— 10
 - (a) professional standards for social workers in England;
 - (b) standards of conduct or ethics for registered students.
- (2) Social worker regulations may make provision about arrangements for assessing whether a person meets a professional standard relating to proficiency. 15
- (3) If the Secretary of State has made regulations under section 39(1)(a) (transfer to the regulator of functions in connection with approved mental health professionals), the reference in subsection (1) to professional standards for social workers in England includes professional standards relating to their work as approved mental health professionals. 20
- (4) In this section “professional standards” includes standards relating to—
 - (a) proficiency;
 - (b) performance;
 - (c) conduct and ethics;
 - (d) continuing professional training and development. 25

25 Education and training

- (1) Social worker regulations may require the regulator or the Secretary of State to determine and publish standards of education or training in England for people who are or who wish to become social workers.
- (2) Social worker regulations may make provision for the regulator to operate a scheme for the accreditation of— 30
 - (a) courses of education or training for people who are or who wish to become social workers in England;
 - (b) qualifications for people who are or who wish to become social workers in England. 35
- (3) The regulations may make provision in connection with the accreditation scheme.
- (4) For example, the regulations may make provision about—
 - (a) the criteria for accreditation or continued accreditation;
 - (b) the procedure for accreditation or renewal of accreditation; 40
 - (c) duties to provide information to the regulator;
 - (d) the publication of the scheme.

26 Discipline and fitness to practise

- | | |
|--|----|
| (1) Social worker regulations may make provision about – | |
| (a) discipline of social workers in England or registered students; | |
| (b) fitness to practise as a social worker in England. | |
| (2) For example, the regulations may make provision about – | 5 |
| (a) the person by whom decisions about discipline or fitness to practise are to be taken; | |
| (b) the appointment of assessors, examiners or legal or other advisers; | |
| (c) the circumstances in which disciplinary action may be taken or the circumstances in which a person’s fitness to practise is impaired; | 10 |
| (d) the procedure for considering, investigating or determining disciplinary matters or fitness to practise (including standard of proof); | |
| (e) powers to obtain information; | |
| (f) temporary measures that may be taken against a person pending the outcome of an investigation; | 15 |
| (g) sanctions; | |
| (h) appeals against decisions. | |

27 Advisers

- | | |
|---|----|
| (1) Social worker regulations may – | |
| (a) permit or require the regulator to appoint one or more people or panels of people to advise the regulator on matters relating to its functions, and | 20 |
| (b) make provision about the functions of people or panels so appointed. | |
| (2) The regulations may make further provision in connection with the appointment of a person or panel. | 25 |
| (3) For example, the regulations may make provision about – | |
| (a) payments to be made to those appointed; | |
| (b) staff, facilities or other assistance. | |

Default powers, information, co-operation etc

28 Default powers 30

- | | |
|---|----|
| (1) This section applies where social worker regulations appoint a person other than the Secretary of State as the regulator. | |
| (2) The regulations may confer power on a specified person to give the regulator a remedial direction if the regulator – | |
| (a) has defaulted in performing any functions and has not remedied the default, or | 35 |
| (b) is likely to default in performing any function. | |
| (3) The regulations may make further provision about remedial directions and their enforcement. | |
| (4) For example, the regulations may make provision about – | 40 |
| (a) the procedure for determining whether the regulator has defaulted or is likely to default; | |

- (b) the procedure for giving remedial directions;
- (c) the steps that the specified person may take if the regulator fails to comply with a remedial direction (which may include doing anything that the regulator can do);
- (d) the payment by the regulator of any expenses incurred by the specified person (including expenses incurred in making payments to anyone acting on the specified person’s behalf). 5

29 Publication and sharing of information

Social worker regulations may include provision permitting or requiring the regulator to publish or disclose information. 10

30 Duty to co-operate

Social worker regulations may impose duties on the regulator to co-operate with others in connection with the regulator’s functions.

31 Transfer schemes

- (1) Where social worker regulations appoint a new regulator, they may authorise the Secretary of State to make a scheme for the transfer of property, rights and liabilities from the old regulator to the new regulator or to another person (a “transfer scheme”). 15
- (2) “The old regulator” means –
 - (a) in relation to the first exercise of the power to make social worker regulations appointing a regulator, the Health and Care Professions Council, and 20
 - (b) in relation to any subsequent exercise of the power, the regulator previously appointed by social worker regulations or a person who holds property, rights and liabilities for the purposes of that regulator. 25
- (3) The regulations may provide that a transfer scheme may include provision –
 - (a) about the transfer of property, rights and liabilities that could not otherwise be transferred;
 - (b) about the transfer of property acquired, and rights and liabilities arising, after the making of the scheme. 30
- (4) The regulations may provide that a transfer scheme may make consequential, supplementary, incidental or transitional provision and may –
 - (a) create rights, or impose liabilities, in relation to property or rights transferred;
 - (b) make provision about the continuing effect of things done by the old regulator in respect of anything transferred; 35
 - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the old regulator in respect of anything transferred;
 - (d) make provision for references to the old regulator in an instrument or other document in respect of anything transferred to be treated as references to the transferee; 40
 - (e) make provision for the shared ownership or use of property;
 - (f) if the TUPE regulations do not apply in relation to the transfer, make provision which is the same or similar. 45

- (5) In subsection (4)(f), “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).
- (6) In this section –
- (a) references to rights and liabilities include rights and liabilities relating to a contract of employment; 5
 - (b) references to the transfer of property include the grant of a lease.

Fees and funding

32 Fees

- (1) Social worker regulations may confer power on the regulator to charge fees in connection with – 10
- (a) registration or continued registration in a register mentioned in section 22;
 - (b) assessing whether a person meets a professional standard relating to proficiency as mentioned in section 24(2);
 - (c) accreditation or continued accreditation in accordance with a scheme mentioned in section 25. 15
- (2) Where social worker regulations appoint a person other than the Secretary of State as the regulator, they must require the regulator to pay any fee income to the Secretary of State unless the Secretary of State directs otherwise.
- (3) The regulations may include provision about – 20
- (a) the setting of fees (including provision imposing constraints on how they are set);
 - (b) the collection and recovery of fees.
- (4) The regulations may authorise fees to be set at a level that exceeds the cost of the things in respect of which they are charged. 25
- (5) But the regulations must require whoever is setting the fees to do so with a view to ensuring that, so far as possible, the regulator’s fee income does not exceed its expenses (taking one year with another).

33 Grants

Social worker regulations may confer power on the Secretary of State to make grants to the regulator (in cases where the Secretary of State is not the regulator). 30

Supplementary content

34 Offences

- (1) The power to make social worker regulations may be used to create offences in connection with – 35
- (a) registration in a register mentioned in section 22;
 - (b) prohibitions or restrictions imposed under section 23 (restrictions on practice and protected titles);
 - (c) failing to comply with a requirement to provide documents or other information or to attend and give evidence under the regulations; 40

- (d) providing false or misleading information or evidence in response to a requirement under the regulations.
- (2) If social worker regulations create an offence, the regulations –
 - (a) must provide for the offence to be triable summarily only, and
 - (b) may not provide for the offence to be punishable with imprisonment. 5

35 Conferral of functions and sub-delegation etc

- (1) Social worker regulations may be used to confer functions on the regulator or a Minister of the Crown.
- (2) Social worker regulations may confer discretions on the regulator or a Minister of the Crown or make provision for the delegation of functions conferred by the regulations (including functions that involve exercising a discretion). 10
- (3) Social worker regulations may confer powers to make, confirm or approve subordinate legislation.
- (4) The provision that may be made in social worker regulations by virtue of section 43 includes, in particular, provision amending, repealing or revoking any provision made by or under an Act or any other instrument or document (whenever passed or made). 15

Consultation

36 Consultation about social worker regulations

- (1) Before making social worker regulations the Secretary of State must carry out a public consultation. 20
- (2) Where the Secretary of State lays a draft of an instrument containing social worker regulations before Parliament, it must be accompanied by a report by the Secretary of State about the consultation.

Interpretation etc 25

37 Repeal of existing powers to regulate social workers

- (1) The Health Act 1999 is amended as follows.
- (2) In section 60 (regulation of health professions, social workers, other care workers etc) –
 - (a) in subsection (1), omit paragraphs (ba) and (bb); 30
 - (b) in subsection (2), in paragraphs (c) and (d), omit “(other than the social work profession in England)”;
 - (c) omit subsection (2ZA);
 - (d) in subsection (2ZC), omit paragraph (o);
 - (e) after subsection (2ZE) insert – 35
 - “(2ZEA) In subsection (2ZC) “social work in England” means social work which is required in connection with any health, education or social services provided in England.”;
 - (f) in the heading for “, social workers, other care” substitute “and social care”. 40

- (3) In section 60A (standards of proof in fitness to practise proceedings) –
- (a) in subsection (2A), omit paragraph (b);
 - (b) in subsection (3), omit “or the social work profession in England (within the meaning given in section 60(2ZA))”.

38 Interpretation of Chapter 5

In this Chapter –

“approved mental health professional” has the meaning given by section 114 of the Mental Health Act 1983;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975; 10

“register” means a register required to be kept by regulations under section 22 (and related expressions are to be read accordingly);

“registered student” means a person registered as someone who is undertaking education or training in England to become a social worker; 15

“the regulator” means the person appointed by social worker regulations under section 21;

“social work in England” means social work which is required in connection with any health, education, or social services provided in England; 20

“social worker in England” means a person who engages in social work in England.

CHAPTER 2

APPROVAL OF COURSES IN RELATION TO MENTAL HEALTH SOCIAL WORK

39 Approval of courses for approved mental health professionals 25

- (1) The Secretary of State may by regulations amend section 114ZA of the Mental Health Act 1983 (approval of courses for approved mental health professionals in England) for the purposes of –

(a) transferring the functions of the Health and Care Professions Council under that section to the regulator of social workers; 30

(b) giving the regulator of social workers power to charge fees for approving courses under that section.

- (2) The regulations may include provision in connection with the approval of courses or charging of fees by the regulator under that section.

- (3) For example, the regulations may – 35

(a) authorise the regulator to arrange for another person to exercise functions on the regulator’s behalf;

(b) make provision about the setting of criteria for the approval or continued approval of courses;

(c) make provision about the procedure for approval or renewal of approval; 40

(d) make provision about duties to provide information.

- (4) If the regulations give the regulator power to charge fees, section 32(2) and (3) apply to the regulations as they apply to social worker regulations.

- (5) The provision that may be made in regulations under this section by virtue of section 43 includes, in particular, provision amending, repealing or revoking any provision made by or under an Act passed before this Act or in the same Session.
- (6) In this section “the regulator of social workers” means the person appointed by social worker regulations under section 21. 5
- (7) Regulations under this section are subject to the affirmative resolution procedure.

40 Approval of courses for best interests assessors

- (1) Paragraph 130 of Schedule A1 to the Mental Capacity Act 2005 (assessments in connection with deprivation of liberty: regulations about selection, and eligibility, of persons to carry out assessments) is amended as follows. 10
- (2) After sub-paragraph (2) insert –
- “(2A) In relation to England –
- (a) the provision that the regulations may make in relation to a person’s training in connection with best interests assessments includes provision for particular training to be specified by the regulator of social workers or the Secretary of State otherwise than in the regulations; 15
- (b) the provision that the regulations may make in relation to a person’s training in connection with other assessments includes provision for particular training to be specified by the Secretary of State otherwise than in the regulations. 20
- (2B) The regulations may give the regulator of social workers power to charge fees for specifying any training as mentioned in sub-paragraph (2A)(a). 25
- (2C) If the regulations give the regulator of social workers power to charge fees, section 32(2) and (3) of the Children and Social Work Act 2016 apply to the regulations as they apply to social worker regulations. 30
- (2D) In sub-paragraphs (2A) to (2C) “the regulator of social workers” means the person appointed by social worker regulations under section 21 of the Children and Social Work Act 2016.”
- (3) In sub-paragraph (3) –
- (a) at the beginning insert “In relation to Wales”; 35
- (b) for “the appropriate authority” substitute “the Welsh Ministers”.
- (4) Omit sub-paragraph (4).

PART 3

GENERAL

41 Power to make transitional provision

The Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act. 5

42 Power to make consequential provision

- (1) The Secretary of State may by regulations make provision that is consequential on any provision made by this Act.
- (2) Regulations under this section may amend, repeal or revoke any provision made by or under an Act passed before this Act or in the same Session. 10
- (3) Regulations under this section that repeal or amend a provision of an Act are subject to the affirmative resolution procedure.
- (4) Any other regulations under this section are subject to the negative resolution procedure. 15

43 Regulations: general

- (1) Regulations under this Act are to be made by statutory instrument.
- (2) Regulations under this Act may make—
 - (a) consequential, supplementary, incidental, transitional or saving provision; 20
 - (b) different provision for different purposes.
- (3) This section does not apply to regulations under section 46.

44 Affirmative and negative resolution procedures

- (1) Where regulations under this Act are subject to “the negative resolution procedure” the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament. 25
- (2) Where regulations under this Act are subject to “the affirmative resolution procedure” the regulations may not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament. 30
- (3) Any provision that may be included in an instrument under this Act subject to the negative resolution procedure may be made by regulations subject to the affirmative resolution procedure.

45 Extent

- (1) Any amendment or repeal made by this Act has the same extent as the enactment amended or repealed. 35
- (2) Subject to that, the preceding provisions of this Act extend to England and Wales only.

46 Commencement

- (1) This Part comes into force on the day on which this Act is passed.
- (2) The other provisions of this Act come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint.
- (3) Different days may be appointed for different purposes.

5

47 Short title

This Act may be cited as the Children and Social Work Act 2016.

Children and Social Work Bill [HL]

A

B I L L

To make provision about looked after children; to make other provision in relation to the welfare of children; and to make provision about the regulation of social workers.

Lord Nash

Ordered to be Printed, 19th May 2016

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