



Department
for Education



Department
of Health &
Social Care

Social Work England secondary legislation:

Assessment of Impacts

June 2018

Contents

Summary	3
Social Work England secondary legislation – general assessment of impacts	4
Part 1 – General impacts	5
Introduction and background	5
What are the policy objectives and the intended effects?	5
What do the regulations cover? What are the impacts and which groups of people do they affect?	6
Registration (Part 3 of the regulations)	7
Education and training (Part 4 of the regulations)	8
Fitness to practise (Part 5 of the regulations)	9
Cost impacts	10
Other general impacts	10
Conclusions: overall impacts	12
Part 2 – Equalities impacts	13
Introduction	13
Policy objectives: general overview	15
Consultation and engagement	16
Analysis – Government’s assessment	18
Equalities impacts - overall conclusions	22
ANNEX A: What’s new in the regulations: summary of impacts and groups affected	24

Summary

This document sets out the outcomes from the general assessment of impacts, including equalities impacts, which the Department for Education and the Department of Health and Social Care have undertaken following public consultation on the regulatory framework for Social Work England, which will be the new regulatory body for social workers in England.

The assessments should be read alongside the government response to the consultation on Social Work England's secondary legislation, and the secondary legislation (the Social Workers Regulations 2018) which the Government has brought forward and laid before Parliament in draft on 4 June 2018.

Social Work England secondary legislation – general assessment of impacts

Policy Area	Regulation of social workers in England
Lead Department	Department for Education and the Department of Health and Social Care
Stage	Secondary legislation. Follows primary legislation (the Children and Social Work Act 2017) which provides for Social Work England to be the new regulatory body for social workers in England.
Status	The draft secondary legislation provisions fall outside the scope of a formal regulatory impact assessment. A general and equalities assessment have been developed in order to support and inform scrutiny by Parliament and other stakeholders of the Social Workers Regulations 2018.
Contact for Enquiries	Louise Bridson 020 7 783 8394

Part 1 – General impacts

Introduction and background

1. In January 2016, the then Secretary of State for Education and the Health Secretary of State announced that, as part of Government's social work reform programme, Government would establish Social Work England as a new, specialist regulator for social workers in England. Social Work England, as a separate legal entity in the form of a Non-Departmental Public Body (NDPB), will operate at arm's length from Government and will take over the regulation of all social workers in England (c96,500¹ as at April 2018) from the current regulator, the Health and Care Professions Council (HCPC).
2. The Children and Social Work Act 2017 establishes Social Work England. In order to operate as the regulator, however, Social Work England also needs a secondary legislative framework, which sets out the core elements of how its regulatory functions will operate. The policy underpinning Social Work England's secondary legislative framework was subject to public consultation from 8 February to 21 March 2018.
3. Regulations (the Social Workers Regulations 2018), which take account of feedback received during the consultation exercise, have now been laid in draft before Parliament. If approved, Social Work England regulations will be commenced and take full effect when Social Work England takes over the regulation of social workers in England from the current regulator, the HCPC.

What are the policy objectives and the intended effects?

4. In creating the legal framework for Social Work England, Government's aim has been to design a flexible model of professional regulation, which secures public protection, fosters professionalism and improves practice, whilst also being able to adapt swiftly to future developments and take advantage of new approaches. This includes approaches proposed by the Professional Standards Authority for Health and Social Care and the Law Commissions.^{2,3}
5. By taking the latest thinking, learning from other regulators and listening to the feedback received through the consultation a regulatory framework has been

¹ [HCPC - Registrant statistics](#)

² [PSA - Right-touch reform: A new framework for assurance professions November 2017](#)

³ [Law Commission, Scottish Law Commission, Northern Ireland Law Commission - Regulation of Health Care Professionals, Regulation of Social Care Professionals in England April 2014](#)

developed that will enable Social Work England to be streamlined, proportionate and efficient. This approach, enabling a proportionate, targeted and efficient system of public protection, will have benefits for the general public and people who use services – including some of the most vulnerable children, young people and adults in society. It will also have benefits for social workers themselves through increasing public confidence and the status of the profession. The regulations will enable:

- social workers to be better prepared for the challenges of direct practice with service users, through a new system of approving initial education and training;
 - Social Work England to operate a less adversarial, more proportionate fitness to practise system which ensures public protection and reduces stress on social workers and supports practice improvement; and
 - Social Work England to approve and recognise post-qualification specialisms, helping to bring consistency to social work career pathways.
6. As a single-profession regulator, Social Work England will also be able to use the data and evidence it gathers. Through delivering its core regulatory functions, Social Work England will gain an expert understanding of the challenges that face the social work profession in England and use this information to feed learning back into the wider social work system.

What do the regulations cover? What are the impacts and which groups of people do they affect?

7. The regulations cover Social Work England’s core regulatory functions – registration, approval of education and training courses and fitness to practise – and other functions concerned with the operation and oversight of the regulator, including the appointment of advisers, regulatory rules and default powers.
8. In developing the draft regulations, the ambition has been to build on the latest thinking and research to give greater flexibility to the regulator to adapt and refine its operational procedures and processes over time, ensuring they remain relevant, up-to-date and continue to deliver the best possible protection for the public. **Annex A** summarises, for each of the key features of the regulations, their rationale, principal impacts, and the individuals and organisations those impacts will fall upon. An overview of the main changes relating to the three core regulatory functions, and their impacts, is provided below.

Registration (Part 3 of the regulations)

9. **Registration with conditions** – This will allow Social Work England to register individual social workers subject to conditions. The approach will offer the regulator greater flexibility where registrants do not fully meet eligibility requirements, for example because of a health condition. For the individual social worker concerned, this will allow them to continue to practise where the regulator determines it is safe and appropriate for them to do so, providing they meet any conditions set by Social Work England, where previously they may have been prevented from registering, or continuing to be registered. This will also potentially be beneficial to employers.
10. **Annotation of sanctions** – In addition to the recording of current fitness to practise sanctions on the register (as the current regulator does), the regulator will also have the power to annotate expired sanctions on the register for periods of time it determines in regulatory rules. This will strengthen the transparency around each registrant’s practice history. Employers accessing the information should benefit in terms of better informed and more thoroughly risk-assessed recruitment and staff deployment decisions. That in turn should lead to better public protection outcomes.
11. For those whose sanctions are recorded, some adverse impacts on job opportunities, as employers factor the information into their recruitment choices, are possible. However, Government considers that such impacts are outweighed by the benefits to public protection. To mitigate the possible negative impact on registrants, the draft regulations are clear that any period of annotation of expired sanctions must be proportionate. Additionally, rules setting out periods of annotation will be subject to consultation and Secretary of State oversight, thereby providing additional safeguards.
12. **English language proficiency** – Currently, all applicants must be able to meet the proficiency standards set by HCPC. These include proficiency in English language, and international applicants must demonstrate this as a requirement of registration. European Economic Area (EEA) applicants with mutual recognition rights are not currently specifically required to provide proof of language proficiency as a condition of registration. The Immigration Act 2016 has already introduced English language requirements for public sector workers in public-facing roles. Social workers employed by local authorities will therefore already be subject to such provisions. Under the new regulations, all registrants will need to demonstrate English language proficiency, including EEA applicants.
13. The numbers of EEA nationals impacted by the new provision in relation to initial registrations are likely to be low (HCPC internal data indicates that EEA nationals

accounted for circa 5% of new registrants with HCPC between 2013 and 2016). On re-registration, under the draft regulations, all social workers would be subject to this provision. It seems likely that many if not most existing registrants would be able to offer sufficient proof of proficiency in English or to pass a test where they had already been working successfully in England for some time.

14. The Government believes language proficiency is a key element in safe and effective social work practice. Given this, the draft regulations also make lack of English language proficiency a ground under which fitness to practise proceedings may be brought. Overall, there may be adverse impacts on a small group of registrants who may be unable to demonstrate English language proficiency, but Government is satisfied that these would be outweighed by the proportionate powers being introduced to enhance public protection.
15. These issues are considered in more detail below and in the Equalities Assessment at Part 2.

Education and training (Part 4 of the regulations)

16. The draft regulations will enable a new process for the re-approval of education and training courses. Unlike the current system of regulation, under the Social Workers Regulations 2018, Social Work England must make rules requiring it to consider re-approving all courses at least every six years. This will ensure that social work education and training courses remain fit for purpose and continue to meet Social Work England's standards. The provision will not, in itself, give rise to additional costs for providers. Much will depend on the detailed arrangements that Social Work England sets out in its rules, following consultation with the sector. Were any additional costs to arise at that stage, Government expects that these would be small in scale and outweighed by the benefits to providers (in terms of on-going approval of their courses) and to the circa 4,000 social work students who graduate each year.
17. The regulator will also have a power to approve post-qualification courses of education and training, including specialisms, and will take on responsibility for approving existing specialist courses/training in relation to Approved Mental Health Professionals and Best Interest Assessors. This will provide one clear central point for the approval of post-qualifying courses, which will benefit those seeking job moves and career progression and employers seeking to recruit them.

Fitness to practise (Part 5 of the regulations)

18. There are currently circa 1,200 fitness to practise cases relating to social workers referred to the HCPC annually.⁴ An effective fitness to practise system is critically important both in terms of public protection and public confidence in regulated professions. Government's aim is to enable Social Work England to create a flexible, efficient and proportionate fitness to practise regime. In order for it to be able to do so Government has introduced three new processes within the Social Work England fitness to practise system:

- a. **Accepted outcome** – this will provide greater flexibility for the regulator to dispose of fitness to practise cases without the need for a hearing where the registrant accepts the facts of the case and the regulator's proposed sanction. This will bring benefits both to registrants, through a less stressful and lengthy fitness to practise process, and the regulator through greater efficiency and reduced costs. The draft regulations make clear, however, that the registrant maintains the right to a hearing if they want one, and that cases must go to a hearing where it is in the public interest.
- b. **Automatic removal** – this will allow the regulator to take action to remove social workers convicted of certain very serious criminal offences (e.g. murder or rape) from the register, without having to go through fitness to practise processes. This will mean that registrants are not unnecessarily subjected to the additional stress of fitness to practise processes, and bring cost savings to the regulator. It also brings public protection benefits by ensuring swift removal from the register in cases where it is clear that a registrant is unfit to practise as a social worker. The draft regulations mitigate any potential adverse outcomes for registrants, for example in cases of mistaken identity, by providing for appeal rights where there are factual or legal errors. There will also be rights of representation if a social worker thinks their removal from the register is based on an error of fact.
- c. **Criminal convictions resulting in custodial sentences** – this provides for a more streamlined fitness to practise process for social workers convicted of criminal offences which have resulted in a custodial sentence (excluding offences subject to automatic removal) given that a criminal court has already determined guilt. This more streamlined process will achieve swifter public protection, while also saving the regulator time and money. Registrants would retain the same appeal rights as in a 'standard' fitness to practise case, so Government does not expect an adverse impact on individuals.

⁴ [HCPC - Fitness to Practise annual report 2017](#)

19. In addition to the above Social Work England will be able to change its operational processes (through rules that set out the procedures and requirements in relation to its core functions) efficiently and quickly. In order to ensure that any process set out through rules that could impact on social workers in England is transparent and proportionate, the Social Workers Regulations 2018 are clear that Social Work England must consult on its rules and any changes to its rules (other than changes that are minor or not substantive).

Cost impacts

20. As part of the Government consultation, respondents were asked if they thought the proposed changes would affect the costs for their organisation or those they represent. A majority (66%) felt that costs would increase. A range of different reasons were cited, with several respondents pointing to the possibility of cost increases linked to registration. The draft Social Workers Regulations 2018 do not, in themselves, give rise to new, direct cost impacts on the sector. The principal cost impacts are those linked to the setup up of Social Work England. Government will ensure that these costs do not fall on social workers or other professionals currently regulated by HCPC. Future fees – for registrants and education and training providers (should Social Work England seek to charge for the approval of courses following consultation) – will be a matter for the regulator. Social Work England will be required to consult and to seek approval from the Secretary of State before determining the level of any fees. The Government will work with Social Work England to enable it to become self-financing over time, bringing it into line with the operation of other regulators.

Other general impacts

21. The main direct impacts of the draft Social Workers Regulations 2018 provisions are summarised at **Annex A**. In addition, Government has also considered the regulations in relation to other specific groups. Government's conclusions are as follows:

- **Impact on education and training providers, including Higher Education Institutions** – Government does not expect that there will be additional burdens or costs on education and training providers arising directly from the regulations. Once Social Work England consults on, and then sets the detail in its rules, it is possible that there could be some additional costs to education and training providers. Were this to occur, our view is that these will be minimal and balanced by the benefits to education and training providers who will be able to cite on going approval of their courses by the regulator.

Under the Social Workers Regulations 2018, Social Work England must make rules, which must be subject to consultation, requiring it to consider re-approving all courses at least every six years. This will ensure that social work education and training courses remain fit for purpose. In practice, Government expects that Social Work England, where possible, will align re-approval with existing education and training provider internal quality assurance mechanisms to minimise any potential additional burden.

- The potential for Social Work England to charge fees for the approval of education and training courses also brings the potential for increased costs for providers. The regulations do not, however, introduce requirements for fees to be charged, only a power for the regulator to do so, subject to consultation and Secretary of State approval. The power to charge for course approval is also provided for within the existing HCPC regulatory framework (subject to Privy Council approval).
- **Impact on employers (local authorities, the NHS and independent sector)** – Local authorities in England directly employ almost 47,000 social workers as of September 2017 (30,670 child and family social workers⁵ and 16,200 adult social workers⁶), with a further 3,100 adult social workers employed by the NHS and by the independent sector (2,100 and 1,000 respectively⁷). Government does not hold data on the number of children and families social workers employed by the NHS or the independent sector. Government does not expect that there will be additional burdens/costs on employers arising directly from the regulations. There are likely to be benefits for social work employers arising from the increased transparency in the information held on the register, including information relating to fitness to practise sanctions and post-qualifying skills and specialisms. This should help employers to make safe, effective and more cost and time-efficient recruitment and deployment decisions. Over time, bespoke regulatory standards, reflected in course approval processes, should also bring benefits, ensuring greater consistency in the quality of courses and strengthening the supply of skilled social workers.
- **Impact on families** – While the new regulatory framework does not give rise to direct impacts on families, Government expects families to experience significant indirect benefits. For example, better trained social workers (having

⁵ [Government official statistics - Children's social work workforce 2017](#)

⁶ [Skills for Care - Headline social worker statistics: National Minimum Dataset for Social Care February 2018](#)

⁷ [Ibid](#)

trained on courses that have been approved by Social Work England) will be better equipped for direct work with families, meaning that they are more able to bring about positive outcomes through social work interventions. To give a sense of scale, there were 777,850 episodes of need (where a child has been assessed by a social worker as needing support) in 2016-17.⁸ In addition, the more streamlined and efficient fitness to practise processes that Social Work England will be able to operate will bring benefits in terms of swifter public protection.

Conclusions: overall impacts

22. Government's assessment is that the draft regulations provide for the establishment of a modern, proportionate regulatory system, which gives greater flexibility to the regulator to adapt and update its processes over time. It is expected that this will bring benefits in terms of robust public protection, greater transparency, and better education and training for social workers. This, in turn, has the potential to bring wide-ranging benefits for vulnerable children, families and adults, individual social workers, the social work profession and society as a whole.

⁸ [Government official statistics - Characteristics of children in need: 2016 to 2017](#)

Part 2 – Equalities impacts

Introduction

23. The following paragraphs record the analysis and assessment undertaken in fulfilment of responsibilities under the Public Sector Equality Duty (PSED). The duty is set out in s149 of the Equality Act 2010.

24. The PSED requires all public authorities when exercising their functions to have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

25. The relevant protected characteristics for the purposes of the PSED are⁹:

- sex;
- race;
- disability;
- religion or belief;
- sexual orientation;
- pregnancy and maternity;
- gender reassignment; and
- age.

Note: marriage and civil partnership is also a protected characteristic but is not relevant to the PSED.

26. As outlined in Part 1 of this document, the draft regulations contain a range of provisions related to the general functions of Social Work England which differ from the current regulatory framework. The analysis which follows focuses on those new features and their potential impacts from the PSED perspective.

⁹ Equalities Act 2010, section 4

27. In developing our analysis, we have taken into account, where applicable, the United Nations Convention on the Rights of Persons with Disabilities and the United Nations Convention on the Rights of the Child.

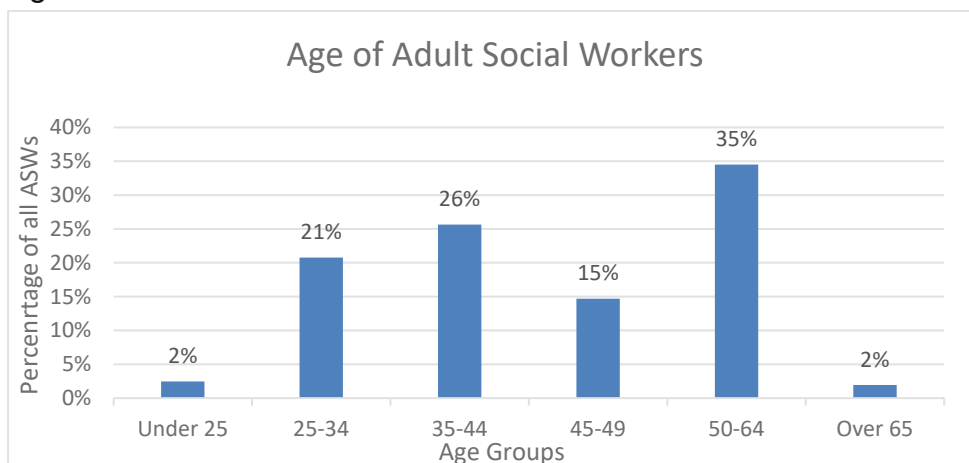
28. The analysis builds on the consultative work undertaken with the social work and regulatory profession as the draft regulations were developed. It draws particularly on views offered by respondents to the Government's recent public consultation on the draft regulatory framework.

29. It also takes account of published data bearing on the protected characteristics of registered social workers (see Box 1 below).

Box 1. Social work workforce – data bearing on protected groups

Social workers employed in local authority adult services

- Average (mean) age = 44.3 years¹⁰
- Age distribution:



- This distribution is broadly similar to the age distribution of the national employed population.¹¹ However, among the economically active population as a whole, 13% are aged under 25 compared to 2% for the social workers.
- Gender breakdown: 19% males, 81% females¹². This compares to the 53% male and 47% female percentage breakdown among the broader economically active population in England¹³.

¹⁰ [Workforce Estimates. The size and structure of the adult social care sector and workforce in England \(2017\). NMDS-SC, Skills for Care.](#)

¹¹ Annual Population Survey - Regional - Labour Market Status by Age. Nomis, Office for National Statistics.

¹² Ibid. Workforce Estimates.

¹³ [UK Labour Market: February \(2016\). Office for National Statistics.](#)

- Disability – 6% of the social worker workforce in adult services are registered disabled¹⁴. This compares to an estimated 19%¹⁵ across the working-age of the general UK population.
- Among social workers working with adults in England, 91% are British, 3% EEA (non-British) and 6% Non-EEA¹⁶. This closely matches the national UK employment picture where UK nationality is 89.0%, EU (non-British) Nationals totalled 7.1% and 3.9% were from other nations¹⁷.
- Ethnicity – Among social workers working with adults the ethnicity breakdown is as follows: 75% White; 15% Black; 6% Asian; 3% Mixed and 1% Other.¹⁸ Across England and Wales, the 2011 Census¹⁹ reported the total population ethnicity breakdown as: 86% White; 7.5% Asian; 3.3% Black; 2.2% Mixed and 1% Other.

Social workers employed in local authority children's services

- Age: At 30 September 2017²⁰, based on headcount, 15% were aged between 20-29; 55% between 30 and 49 years of age and 30% aged 50+.
- Gender²¹: 86% female; 14% male.
- Ethnicity: 66% were of a white ethnic origin; 9% Black or Black British and 4% Asian or Asian British²².

Policy objectives: general overview

30. The general aims and purposes of the draft Social Workers Regulations 2018 are set out in detail at Part 1 of this document. In brief, the regulations define the powers, duties and core regulatory functions for Social Work England, which will be the new regulator for social workers in England. The regulator's core functions will include maintaining a register of social workers, approving education and training courses and conducting fitness to practise inquiries. In developing the legal framework for Social Work England, the Government's ambition is to create a flexible model of professional regulation that has public protection at its core,

¹⁴ The NMDS-SC disability records are likely to be under-reported since the information was provided by the employer, rather than the individuals themselves. In addition, the NMDS-SC is likely to only capture the LFS equivalent of "work-limiting disability."

¹⁵ [Family Resource Survey 2016/17 \(2018\). Department for Work and Pensions. National Statistics.](#)

¹⁶ NMDS, Ibid.

¹⁷ [At Q4 2017. A. Powell \(2018\) Employment by Country of Birth and Nationality. Briefing Paper, House of Commons Library](#)

¹⁸ NMDS Ibid.

¹⁹ [Population of England and Wales by ethnicity \(2011\). Gov.UK.](#)

²⁰ [Children and family social work workforce in England, year ending 30 September 2017. Statistics: Children's social work workforce. Department for Education.](#)

²¹ Children and family social work workforce in England, Ibid.

²² Data was unavailable for 18% of children social workers, Ibid.

fosters professionalism, can adapt swiftly to future developments and is capable of proportionate, targeted and efficient regulation.

31. Social Work England's central focus will be public protection. It will achieve this by:

- setting profession specific standards that clarify expectations about the knowledge, skills, values and behaviours required to become and remain registered as a social worker in England;
- setting standards for initial education and training to ensure that newly qualified social workers are prepared for the challenges of direct practice with service users;
- ensuring that all social workers maintain their fitness to practise by setting out expectations for continuous fitness to practise and operating a system to identify and support those social workers that are not meeting the standards; and
- having the power to set standards and approve and recognise post-qualification specialisms, helping to bring consistency to social work career pathways.

Consultation and engagement

32. The Government's public consultation on the regulatory framework for Social Work England ran from 8 February and 21 March 2018. 198 responses were received from a wide variety of interested stakeholders, including representatives from social worker networks, local authorities, unions, charities, education providers, service user groups, regulatory bodies and individual social workers. During the consultation period, officials also held 11 events, consulting with social workers, and education providers and engaging directly with young people.

33. Overall respondents to the consultation endorsed the policy behind the regulatory framework proposed. A range of likely benefits were cited in the feedback to the consultation questions as a whole, including the potential for: better safeguarding for vulnerable children and adults, better, more consistent training for social workers and improved confidence in the profession.

34. As part of the public consultation, a specific question was asked about whether any of the regulatory proposals would help achieve any of the following aims:

- a - Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

b - Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it

c - Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it.

Respondents were also asked:

If you have answered 'yes' to any of the above questions, could the proposals be changed so that they are more effective?

If you have answered 'no' to any of the above questions, please explain what effect you think the proposals will have and whether you think the proposals should be changed so that they would help achieve those aims?

35. Responses to questions (a)-(c) above were as follows:

Will any of the proposals help achieve any of the following aims - Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010?

Responses	Total	Percent
Yes	58	32%
No	57	31%
Don't know	67	37%
	182	

Will any of the proposals help achieve any of the following aims - Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?

Responses	Total	Percent
Yes	57	32%
No	49	27%
Don't know	74	41%
	180	

Will any of the proposals help achieve any of the following aims - Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it?

Responses	Total	Percent
Yes	51	28%
No	52	29%
Don't know	78	43%
	181	

36. As the data in the tables above shows, respondents to the Government's consultations were divided in their views on whether the new regulatory framework would or would not impact directly on: any conduct that is prohibited by or under the Equality Act 2010; advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and fostering good relations between persons who share a relevant protected characteristic and persons who do not share it. Most opted for "don't know" in response to the three specific questions posed.

37. Where respondents offered additional background on their responses (only a minority did so), the clearest theme emerging was that, until detailed rules were developed by Social Work England or implementation was underway, assessing equality impacts – positive or negative - in any detail would be difficult. Some respondents argued that the changes overall could lead to positive benefits for some in the protected groups (e.g. disabled people). One respondent mentioned that the regulations offered scope for the regulator to work more closely with employers to promote workplace equality. However, others raised questions about the possible adverse impact of language requirements on workers from overseas; one respondent also questioned how the fitness to practise arrangements would apply in practice and whether this might possibly have implications for those with health, including mental health, conditions.

Analysis – Government's assessment

38. From the outset, equalities considerations have been at the forefront in the development of the regulations for two main reasons:

- First, any new regulatory framework has the potential to impact on social workers who are on the register or wish to register; this will include any social workers who fall within the protected groups.
- Second, if the regulatory framework achieves its aims in delivering public protection and ensuring all social workers have the up-to-date skills they need for their work, significant, longer term benefits should accrue to the vulnerable service users whom social workers support, including many from within the protected groups. We know that, in some service areas, people from certain protected groups (e.g. those with disabilities, those from minority ethnic groups) are over-represented compared to their representation in the general population, so any improvements in support may prove particularly beneficial in delivering on the PSED aims in relation to these particular groups.

39. In our early development of the regulations, a priority has been to provide sufficient flexibility for the regulator to determine the detail of its processes through rules, subject to public consultation and no objection from the Secretary of State. To ensure, within this, there is an on-going focus on equalities in the new regulator's operations, the regulations provide that Social Work England, as a public body, will be subject to the duties set out in s149 of the Equalities Act 2010. This will include considering the impacts of its decisions and detailed operations on protected groups both when developing and consulting on regulatory rules governing functions such as fitness to practise arrangements and when setting the policies for managing its own staff. Consideration of PSED responsibilities will, therefore, become an integral and on-going part of Social Work England's processes as its rules and policies are framed and updated.

40. In our early development work, we also looked at all three main areas covered by the regulations – registrations, course approvals and fitness to practise arrangements - and reviewed them in the context of the three PSED aims.

41. In doing so, we looked carefully at potential impacts, positive and negative, on each of the protected groups, taking particular account of what we know about the representation of protected groups within the social work profession (see Box 1 above). As Box 1 shows, the main distinct feature of the social work workforce from the equalities perspective is its gender balance, with women in the overwhelming majority.

42. Our initial analysis suggested that, across all three main areas of the regulations, the direct and immediate effects of the new provisions would be broadly neutral from an equalities perspective, though benefits for some in the protected groups over the longer term were likely. Specific findings in support of that view were:

- On the new registration provisions for conditional registration and the increased flexibilities they offer (see paragraphs 9-14 of Part 1 of this document), we concluded that some positive benefits may arise for registrants with ill health conditions and disabilities and, indeed, for returners to the labour market. Women, as the majority in the workforce, may see particular benefits. However, much would depend on the detailed framing of the rules surrounding conditional registration once Social Work England's work was underway. The rules will, of course, be subject to public consultation offering opportunity for all stakeholders, including those representing equalities interests or falling within the protected groups, to input before rules are framed. On the new English language proficiency requirements, while this would, for the first time, require all potential registrants from the European Economic Area to prove proficiency, the number affected and, within that, the number who may be from protected groups (especially from an ethnic minority group) is likely to be very small (further details on the numbers involved is set out above at Part 1, paragraph 13). Any adverse effects for the small number of EEA registrants would, the Government concluded, be more than outweighed by the public protection benefits that would arise for service users from the consistent application of the language requirements to all registrants.
- On course approvals (see paragraphs 16-17 of Part 1), the new arrangements will require all courses to be re-approved every six years. This should, over time, bring benefits in terms of better, more job-relevant course outcomes on graduation for all social work students, including those from protected groups. However, we have no evidence to suggest that those longer term effects would benefit those in the protected groups disproportionately more than others.
- On fitness to practise arrangements (see Part 1, paragraph 18 of this document), arrangements for "accepted outcome" are likely to bring benefits for registrants, including those within the protected groups, through the avoidance of a lengthy and, for some, possibly stressful fitness to practise process. Automatic removal where social workers are convicted of the most serious crimes will help strengthen protections for service clients, including any in the protected groups. However, across all these new provisions, we have no evidence to suggest that impacts – positive or negative – would fall disproportionately on any in the protected groups.

43. Feedback from the public consultation we conducted (see paragraphs 34-37) has not led to any significant change in our assessment. The responses, taken as a whole, generally reinforce the view that equalities impacts will become clearer as

Social Work England's work begins and its detailed rules are consulted on and framed.

44. Provision making Social Work England subject to the duties set out in s149 of the Equalities Act 2010 remains particularly important in this respect, including in relation to the detailed operation of fitness to practise arrangements about which one respondent had expressed uncertainty about possible implications for people with health conditions. It is the case that operational detail on this and other regulatory functions won't be settled until Social Work England's rules are established. However, we are confident that the PSED requirements will ensure, when Social Work England develops and consults on its detailed rules, that equalities considerations and possible impacts on protected groups, including any with health conditions, will be taken fully into account.

45. Post-consultation, we also looked carefully again at the two particular aspects of the draft regulations which are different to the current system of regulation and where more than one respondent to the consultation mentioned that equality considerations might be a concern. These were the:

- Provision making English language proficiency a condition of registration; and
- Provision making lack of English language proficiency a basis for fitness to practise proceedings.

46. The Government believes English language controls need to be applied consistently to all registrants, in line with the Law Commissions' recommendations. The ability to communicate effectively is important in ensuring that the vulnerable children and adults cared for by social workers receive the consistently high quality support and safeguarding they need. Many other regulated professions, including doctors, nurses, dentists, and pharmacists, have introduced English language controls.

47. On **the registration provision**, HCPC already requires evidence of English language proficiency for international registrants. The draft provision will now make this the case for all social workers. However, before implementation, the draft regulations are clear that Social Work England will need to consult on the language proficiency criteria it will apply as a condition of registration. This will help to ensure that any such controls are fair and appropriate and that registrants and others have a say before they are implemented.

48. On **the fitness to practise provision**, this, too, will strengthen current arrangements. HCPC does not currently have English language proficiency as a

ground for a fitness to practise inquiry, though the issue can be picked up under their current “lack of competency” criteria. The new provision now makes clear that a lack of English language proficiency can result in fitness to practise proceedings in its own right, underscoring the importance of English language skills to safe and effective social work practice.

49. The draft regulations ensure that registrants will not be disproportionately affected. They ensure that the regulator will not be able to remove from the register any registrant found to lack sufficient English proficiency until the person has been suspended from the register or subject to a conditions of practice order, for two years. This will give existing registrants time to bring their English language proficiency up to the required standard, with removal available only where they have not been able to do so.
50. Although these provisions will impact on all social workers, we recognise they do mean a change for the small group of EEA nationals who register. However, the Government has concluded that the provisions are proportionate and necessary. Any potential adverse impacts would be outweighed by the benefits that will be delivered in terms of improved consistency of support and better care and protections for services users. The provisions would apply to all registrants equally, across all of the protected characteristics under the PSED.

Equalities impacts - overall conclusions

51. Overall, while the immediate, direct impacts of the draft regulatory provisions are broadly neutral from the equalities perspective, our evidence suggests that the regulations may well offer the prospect of positive benefits for some in the protected groups over the longer term. This will become clearer as the detail of the new rules and processes take shape, following consultation by Social Work England. That there will be a new, specialist social work regulator sharply focused on the specific needs of social work and well acquainted with the characteristics of the workforce and the protected groups within it, should also bring benefits, ensuring that equality for those in the protected groups is effectively monitored and promoted.
52. Government wants to ensure that Social Work England adheres to, and leads the way in, implementing the Equalities Act. Through the draft regulations, Government has taken this opportunity to ensure that Social Work England will be subject to the public sector equality duty in respect of all of its functions. Social Work England will be listed as a public authority in Schedule 19 of the Equality Act 2010. Listing Social Work England in Schedule 2 of The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 will mean it must

annually publish information to demonstrate its compliance with the public sector equality duty and, if the number of its employees reaches or exceeds 250, publish gender pay information.

ANNEX A: What's new in the regulations: summary of impacts and groups affected

Provision	What it involves	Rationale	Main impacts and individuals/ groups affected
Registration with conditions	<p>Flexibility for the regulator to grant registration applications with conditions where it is proportionate and consistent with public protection to do so.</p> <p>Procedure to be set out in rules and to be subject to consultation.</p>	<p>In line with Scottish and Northern Ireland social care regulators, this provision will give Social Work England flexibility to deal proportionately with applications where an individual would be an asset to the profession but who, for a specific reason (e.g. a health condition), may not meet all of the registration requirements without conditions.</p> <p>Designed to avoid unnecessary and disproportionate exclusions from the register and allow individuals time to meet the conditions while ensuring public protection and fitness to practise is safeguarded.</p>	Registrants (social workers) and potential registrants: scope to be registered subject to conditions offers flexibility and opportunities to remain in the profession, where previously registration might have been refused.
Annotations to the register: fitness to practise sanctions	<p>Fitness to practise sanctions where there is a finding of impairment, including expired sanctions, to be annotated on the register.</p> <p>Regulator to determine the length of time that expired sanctions are annotated on the register following</p>	<p>Reflects Law Commission recommendation that public protection is best served by having a transparent public record of a registrant's practice history</p> <p>HCP already annotates current sanctions but not expired sanctions. Designed to give a fuller view of</p>	<p>Public and service users: greater transparency, helping to build confidence in the robustness and rigor of the system</p> <p>Employers: enable better informed and risk assessed recruitment decisions</p>

Provision	What it involves	Rationale	Main impacts and individuals/ groups affected
	consultation and in rules.	registrants' history, enabling employers to make informed recruitment decisions while also affording greater transparency to service users.	Registrants: potential for some adverse impacts on employment opportunities, but protections are built in e.g. sanctions imposed following an impaired fitness to practise finding will only be annotated after any registrant appeal period has expired or where the appeal fails. Additionally, the period for which expired sanctions can be annotated must be proportionate and is subject to consultation
Annotations to the register: post-qualifying specialisms	Power to annotate on the register additional post-qualifying qualifications, and specialisms, subject to setting out in rules those that may be annotated.	<p>This new provision is designed to ensure the new regulatory processes reflect and support the importance of continuing training and development and the acquisition of specialist skills across social workers' careers.</p> <p>Will ensure that where appropriate information on additional post-qualifying skills and specialist accreditations achieved by social workers is publicly available and can be</p>	<p>Employers: transparent information available on additional skills and specialist accreditations acquired – will support more effective employment decisions and greater efficiency in the labour market</p> <p>Registrants: formal recognition of additional skills will support job opportunities and career progression</p>

Provision	What it involves	Rationale	Main impacts and individuals/ groups affected
		<p>drawn on by employers and clients (see also section below on approval and re-approval of education and training below).</p>	<p>Service users: greater knowledge of the skills those working with them hold.</p>
<p>English language controls</p>	<p>Introduction of proportionate English language controls as a condition of registration – lack of English language skills also a basis for fitness to practise proceedings.</p> <p>Will apply to all social workers, including social workers from European Economic Area countries who have mutual recognition rights. Social Work England will set out in rules the process and criteria for determining whether a person meets the requirements.</p>	<p>English language proficiency is fundamental to safe and effective social work practice. Being able to understand and communicate effectively with vulnerable adults, children and families is vitally important.</p> <p>The proposal follows the Law Commissions’ recommendation that regulatory bodies should carry out proportionate language controls on those applying to join professional registers.</p> <p>Also reflects the introduction of language controls for other regulated professions including doctors, nurses, dentists and pharmacists, and the code of practice on English language requirements for public sector workers under Part 7 of the immigration Act 2016.</p>	<p>Service users: new registration requirements will ensure that all social workers are proficient in the use of the English language. This will ensure that they can communicate effectively with service users.</p> <p>Registrants: Social workers will be affected when they renew their registration, or if prior to that lack of English language proficiency necessitates fitness to practise proceedings.</p> <p>All new applicants and those applying for restoration to the register: will have to demonstrate that they meet the English language registration requirement.</p>

Provision	What it involves	Rationale	Main impacts and individuals/ groups affected
<p>Approval and re-approval of education and training courses and qualifications</p>	<p>Social Work England will be able to determine the criteria for the approval of courses and qualifications in regulatory rules, which will be subject to consultation. Will also have the power to approve or attach conditions to approval.</p> <p>The new arrangements will also require all courses to be re-approved every 6 years as a minimum.</p>	<p>Giving Social Work England autonomy to determine, through rules, its approach to approvals and requiring all course to be approved every 6 years will ensure, as practice evolves and new evidence emerges, that the regulator is able to adapt its processes and requirements, helping to ensure provision remains high quality and relevant.</p> <p>Duty to consult and oversight arrangements in relation to new rules will ensure views of social workers, their employers, education providers and other key stakeholders in the system are taken into account.</p>	<p>Whole system benefits: standards (for initial, continuing and specialist education and training) more readily updated/adapted to reflect changes in practice.</p> <p>Social work students: refreshed social work specific standards linked to course approvals should lead to better quality courses. In turn this should lead to better educational outcomes and better prepared students entering the profession.</p> <p>Providers/Higher Education Institutes: no immediate direct impacts but any changes to course standards, once consulted on and approved, may have implications for the design and delivery of some course curricula. Depending on the detailed rules set by Social Work England following consultation with the sector, the requirement for courses to be re-</p>

Provision	What it involves	Rationale	Main impacts and individuals/ groups affected
			approved as a minimum every six years may possibly bring some additional costs for providers but these are likely to be minimal.
	<p>Responsibility for approval of courses for the two existing specialisms (Approved Mental Health Professionals, currently approved by HCPC, and Best Interest Assessors currently approved by the Secretary of State for Health and Social Care) will transfer to Social Work England. Social Work England will set the criteria for the courses and have responsibility for approving them.</p> <p>Social Work England will also have the power to approve other post-qualifying courses of education and training and specialisms relating to social work, using the approval scheme for initial education and training set out in the regulations and regulatory rules.</p>	Will bring a consistent approach to the recognition of post qualification specialisms, building confidence in the system and helping to strengthen career pathways for social workers.	<p>Social work workforce: Will provide one clear central point for the recognition of post-qualifying skills, which will benefit those seeking job moves and career progression.</p> <p>Employers: clearer, transparent framework for the recognition of post qualifying skills and specialisms, aiding recruitment, staff development and practice.</p>
Fitness to practise	The core elements of the Social Work England fitness to practise system are	Building on the Law Commissions 2014 review and Professional	Social workers involved in fitness to practise processes: benefit

Provision	What it involves	Rationale	Main impacts and individuals/ groups affected
	<p>defined in the regulations. They include:</p> <ul style="list-style-type: none"> • the grounds on which fitness to practise may be considered to be impaired • the four, clearly defined and essential elements of the fitness to practise decision-making framework ('triage', 'investigation', 'case examination' and 'adjudication') • new processes for 'accepted outcomes' (where a registrant accepts the facts of the case and the regulator's proposed sanction), automatic removal (covering social workers convicted of certain very serious offences) and criminal convictions 	<p>Standards Authority recommendations, the aim is to create a flexible, efficient and proportionate fitness to practise regime.</p>	<p>from a less adversarial more transparent and proportionate processes, but with the protections of clear appeal rights, consistent with the European Convention on Human Rights.</p> <p>Regulator: with accepted outcomes, automatic removal, and criminal convictions resulting in custodial sentences there is potential for cases to be dealt with more quickly and efficiently, reducing unnecessary costs for the regulator and benefitting the social worker involved.</p> <p>Public: swifter public protection through new, more streamlined, efficient and proportionate processes for accepted outcomes cases and cases where automatic removal or criminal convictions resulting in custodial sentences processes apply.</p>

Provision	What it involves	Rationale	Main impacts and individuals/ groups affected
	resulting in custodial sentences.		
The appointment of advisers	Powers for the regulator to appoint advisers (to offer e.g. specialist advice on their functions or to act as investigators, case examiners or adjudicators in fitness to practise processes).	Aim is to enable the regulator to access expertise outside its immediate workforce, particularly where expert knowledge is essential to support the delivery of its functions.	Regulator: will enable the regulator to work flexibly and proportionately accessing and drawing in the specialist expertise it needs.
Information and advice	Requirements to publish information and give advice to the public, registrants and education providers about the regulatory body and the exercise of its functions; specific requirement to publish a strategic plan.	The aim is to ensure the regulator is as open and transparent in its operations as possible and that registrants, employers and the public are clear about its role.	Employers, social workers, the public and service users: access to clear transparent information about the regulator. Important in promoting and supporting public confidence in the system.
Fees	Powers to charge fees in relation to registration, including for renewal, restoration and annotation. Also, subject to consultation and obtaining approval through the Secretary of State, the approval of courses.	All regulators are funded by fees charged to registrant groups and some charge for the approval of courses.	Social workers – no immediate impact as social workers already pay fees to HCPC and Government has committed to ensuring that any set up costs do not fall on social workers. Beyond transition, fee levels will be a matter for the regulator and would be subject to consultation and Secretary of State approval.

Provision	What it involves	Rationale	Main impacts and individuals/ groups affected
			<p>Course providers. No immediate direct impact as regulations offer only a power to charge fees linked to course approvals – they do not require it. Any future move to charges would be subject to consultation and Secretary of State approval.</p>
Duty to co-operate	<p>Building on the Children and Social Work Act 2017 (which requires Social Work England to co-operate with the social work regulators in Scotland, Wales and Northern Ireland), the regulations specify the other bodies with whom, the regulator must consult. They include employers of social workers and bodies connected with the education, training and regulation of social care and health. Also those involved in the provision, supervision or management of health and social care and the inspection of education, health and social care services.</p>	<p>Aim is to ensure, through collaboration with other key bodies, that Social Work England becomes a key part of the reformed system of health and social care regulation. In order to achieve this regulators need to collaborate and co-operate with each other to deliver public protection.</p>	<p>Service users and public: better join up with other relevant bodies will support on-going sharing of learning and help deliver better public protection.</p> <p>Regulator and other bodies: will facilitate shared learning, effective day to day working links and support on-going improvement.</p>
Professional Standards Authority	<p>Under the Children and Social Work Act 2017, the PSA will</p>	<p>The PSA will carry out many of the same functions in relation to</p>	<p>Public and registrants: Offers an additional level</p>

Provision	What it involves	Rationale	Main impacts and individuals/ groups affected
(PSA) oversight	<p>have oversight of Social Work England's regulatory functions. This includes providing for the PSA to refer specified types of fitness to practise decisions to the High Court if they are concerned that such decisions do not adequately protect the public.</p>	<p>Social Work England as it does in relation to the nine other health and care regulators including the General Medical Council, Nursing and Midwifery Council and the Health and Care Professions Council. This includes carrying out an annual review of how Social Work England discharges its functions and referring cases to the High Court whether it feels that fitness to practise decisions are insufficient for public protection.</p>	<p>of oversight, ensuring confidence in the system, particularly surrounding fitness to practise decisions.</p>
Rule making procedures	<p>Requires the regulator, following consultation, to make rules setting out the detail of many of its functions.</p> <p>Any rules proposed following consultation to be shared with the Secretary of State, who may object and require modifications. The Secretary of State may also seek advice from the PSA. If no objection is received, rules come into force after 28 days on a date determined by the regulator. Or, an earlier date was agreed with the regulator.</p>	<p>Will enable the regulator to initiate change to its processes and functions efficiently and proportionately, subject to appropriate consultation with sectoral interests and a robust oversight mechanism.</p>	<p>Regulator able to initiate change more efficiently and effectively in response to developments in practise and social work roles.</p> <p>Social workers, providers, related bodies – able to contribute to all consultations, ensuring sector expertise and input is taken fully into account in the shaping of any rules.</p>



Department
for Education



Department
of Health &
Social Care

© Crown copyright 2018

This publication (not including logos) is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

To view this licence:

visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3

email psi@nationalarchives.gsi.gov.uk

write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

About this publication:

enquiries www.education.gov.uk/contactus

download www.gov.uk/government/publications

Reference: DFE-00173-2018



Follow us on Twitter:
[@educationgovuk](https://twitter.com/educationgovuk)



Like us on Facebook:
facebook.com/educationgovuk