What these notes do

These Explanatory Notes relate to the Children and Social Work Bill [HL] as brought from the House of Lords on 24 November 2016 (Bill 99).

- These Explanatory Notes have been prepared by the Department for Education in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.

- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.
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Overview of the Bill

1 The Bill has three main purposes:

- Improving decision making, and support for looked after and previously looked after children in England and Wales.

- Improving joint work at the local level to safeguard children and enabling better learning at the local and national levels to improve practice in child protection.

- Enabling the establishment of a new regulatory regime specifically for the social work profession in England.
Policy background

2 The Bill provides the legislative framework to support a programme of reform in children’s social care set out in the Government’s July 2016 policy paper Putting Children First.

Looked after children

3 Local authorities already have a wide range of duties to children they look after and to those leaving their care. The Bill sets out a framework of corporate parenting principles that overlay these existing responsibilities of local authorities towards looked after children and those leaving care to make clear what it means for the authority as a whole to act as a good parent. It would also require local authorities to publish their offer of support to young people leaving their care, and remove the requirement for certain care leavers to be in education and training before they are entitled to a personal adviser and other help from the local authority. This is part of a wider programme of work to support care leavers.

4 The Bill would extend the current considerations of the court when making decisions about the long term placement of children so that it includes an assessment of the child’s current and future needs, including any current and future needs resulting from the impact of harm that a child has suffered (or are likely to have suffered), and of any relationship with a prospective adopter. It would also extend the existing duties of local authorities and schools to promote the educational attainment of children so that these duties also covered children who have been adopted or placed in other long-term arrangements. This is part of a wider programme of reform for adoption.

Other provisions relating to children

5 The Secretary of State currently has powers under the Education Act 1996 to intervene where a local authority is not performing its social care functions to an adequate standard. The Bill extends the Government’s current powers to intervene where local authorities are underperforming to Combined Authorities constituted under the Local Democracy, Economic Development and Construction Act 2009.

6 Currently, joint working at the local level to protect children is coordinated through a set of Local Safeguarding Children’s Boards in each local authority, and where serious incidents of child harm occur reviews are conducted at a local level. The Bill seeks to reframe the approach to local safeguarding by giving the three key safeguarding partners – the local authority, health services, and the police – greater autonomy to define the approach to be taken locally and the appropriate geographical reach of that approach. It also makes provision for the establishment of a central Child Safeguarding Practice Review Panel. Where cases raise issues of national importance the Panel would conduct these reviews and disseminate lessons to the sector at large.

7 The Bill would extend the range of protections afforded to those who have made a protected disclosure – commonly referred to as whistle blowers. Currently, employment law protects employees in children’s social care (among other sectors) from discrimination by their employers. The Bill would extend these protections so that an applicant for a job who had previously made a protected disclosure could not be discriminated against in recruitment decisions.

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Social workers

8 Social Workers in England are currently regulated alongside 15 other health and care professions by the Health and Care Professions Council (‘the HCPC’). As well as maintaining a professional register, the HCPC sets profession-specific standards of proficiency and generic standards of conduct, performance and ethics, standards for continuing professional development, and standards of education and training that define recognised professional qualifications. The HCPC also investigates and takes action on complaints relating to registered professionals.

9 The Bill responds to reviews of social work education by Sir Martin Narey and Professor David Croisdale-Appleby by making provision to establish a specialist social work regulator. The Regulator could keep a register of social workers and social work students; determine eligibility for registration; place restrictions on social work practice; set professional standards for education and training of social workers; and determine an individual social worker’s fitness to practice. The Bill would also allow for the responsibility to approve courses for approved mental health professionals and best interest assessors to transfer to the new regulator. This is part of a wider programme of social care reform.
Legal background

Looked after children

Corporate parenting principles

10 The term “corporate parent” is informally used to describe the relationship between a local authority and a child who is “looked after” within the meaning of section 22 of the Children Act 1989 (“the 1989 Act”), or between a local authority and a child or young person who was looked after by them and in respect of which the local authority has ongoing duties and powers under sections 23A to 24D of the 1989 Act. This latter group of children and young people are informally known as “care leavers”.

11 The 1989 Act imposes a range of specific duties on local authorities towards looked after children and care leavers, for example through the Care Planning, Placement and Case Review (England) Regulations 2010 and the Care Leavers (England) Regulations 2010. Thus local authorities must assess these persons’ needs, prepare and review care plans (for looked after children) and pathway plans (for care leavers) and provide certain types of assistance. There are also some general duties imposed on local authorities in the discharge of their functions in respect of children and young people. Section 22(3) of the 1989 Act requires a local authority to safeguard and promote the welfare of the children it is looking after. Section 10 of the Children Act 2004 requires a local authority in England to cooperate with specified partners with a view to improving the wellbeing of children in their area. Section 11 of the Children Act 2004 further requires a local authority in England to make arrangements to ensure that their functions are discharged having regard to the need to safeguard and promote the welfare of children. Section 19 of the Children and Families Act 2014 requires a local authority to have regard to the need to support and involve children and young people when exercising functions in connection with special educational needs and disability.

Care leavers in England

12 The term “care leavers” is used to describe those children and young people who fall within sections 23A to 24D of the 1989 Act. Those provisions confer powers and impose duties on local authorities as described in paragraph 10 above. Under section 30 of the Children and Families Act 2014 a local authority in England must publish information about the provision which it expects to have available for children and young people who have special educational needs or a disability. Schedule 2 of the Children Act 1989 already places a duty on local authorities to publish information about the services it provides under sections 17, 18, 20, 23B to 23D, 24A and 24B and, where they consider appropriate, about the provision of services by others that local authorities have the power to provide under those sections.

13 Sections 23B and 23C of the 1989 Act impose a duty on a local authority to provide various types of assistance to relevant children and former relevant children who are, in summary, children who were formerly looked after by a local authority. Included in the forms of assistance to be provided is the appointment of a personal adviser if certain criteria are met. Section 23CA of the 1989 Act further requires a local authority to carry out a needs assessment, to prepare a pathway plan and to appoint a personal adviser for a former relevant child, but only if that child has

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informed the responsible local authority that he wishes to pursue a programme of education and training.

**Educational achievement**

14 Section 22(3A)-(3C) of the 1989 Act requires a local authority in England to appoint an officer employed by them to be responsible for promoting the educational achievement of children looked after by them. This duty forms part of the wider duty of a local authority to safeguard and promote the welfare of looked after children under s22(3) of the 1989 Act.

15 There is a linked duty, in section 20 of the Children and Young Persons Act 2008, on the governing body of a maintained school in England and Wales to designate a person to be responsible for the promotion of the educational achievement of looked after pupils and care leavers (see paragraph 20 above). Regulation 3 of the Designated Teacher (Looked after Pupils) (England) Regulations 2009 requires that the designated person must have qualified teacher status.

**Care and adoption proceedings in England and Wales**

16 Section 31 of the 1989 Act enables a court, on the application of a local authority (or authorised person) to make a care order which places a child in the care of a local authority. A court may only make such an order if it is satisfied that the section 31(2) ‘threshold test’ has been met and that making the order would be in the child’s best interests.

17 When deciding whether to make a care order, the court must consider the ‘permanence provisions’ of the section 31A care plan (section 31(3A) of the 1989 Act). The section 31A care plan is a plan for the future care of the child and is prepared by the local authority. Section 31(3B) of the 1989 Act defines the ‘permanence provisions’ as “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”, and there follows a list of three categories of potential options for a child: the child to live with their parent(s) or wider family/ friends or for the child to be adopted or for the child to have some other long term care provision.

18 Section 1(4) of the Adoption and Children Act 2002 lists the matters the court and adoption agencies must have regard to when coming to decisions relating to the adoption of a child. Section 1(4)(f) requires courts and adoption agencies to have regard to the relationship a child has with relatives and any other person the court or adoption agency considers relevant.

**Other provisions relating to children in England**

**Combined authority functions relating to children**

19 Under Part 6 of the Local Democracy, Economic Development and Construction Act 2009, local authorities in England are able to join together to form wider Combined Authorities. Until 2016 local authorities were only able to transfer certain functions connected with transport and economic development to Combined Authorities, however, following the coming into force of the Cities and Local Democracy Act 2016 local authorities are able to transfer a significantly wider range of functions, including those connected with children’s social care. Under section 497A of the Education Act 1996, as applied to children’s social care functions by section 50 of the Children Act 2004 and section 15 of the Childcare Act 2006, the Secretary of State may issue directions to a local authority, including directions

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requiring children’s social care functions to be discharged by another person on behalf, of or instead of the local authority, where functions are being performed to an inadequate standard. This power of intervention does not yet apply to Combined Authorities.

Serious child safeguarding cases, local arrangements for safeguarding children, child death reviews

20 The obligation on a local authority to establish a Local Safeguarding Children Board (LSCB) was imposed by section 13 of the Children Act 2004. The functions of a LSCB are set out in section 14 of that Act, and further functions are conferred by the Local Safeguarding Children Boards Regulations 2006. The function of undertaking a serious case review in cases where abuse or neglect is suspected and a child has died or has been seriously harmed currently lies with the LSCB under regulation 5(1) (e) and 5(2) of the 2006 Regulations The function in relation to child deaths currently lies with the LSCB under regulation 6 of the 2006 Regulations. The LSCB is responsible for ensuring a collection and analysis of information about each death with a view to identifying a need for a review (by a child death overview panel), matters of concern affecting the safety and welfare of children in the area of the authority and any wider public health or safety concerns arising from a particular death or from a pattern of deaths in that area, and for putting in place procedures for ensuring that there is a coordinated response by the authority their board partners and any other relevant persons to an unexpected death.

Children’s social care: pre-employment protection of whistle-blowers

21 The Public Interest Disclosure Act 1998 (“PIDA”) established a whistleblowing framework, the purpose of which is set out in the preamble as “to protect individuals who make certain disclosures of information in the public interest; to allow such individuals to bring action in respect of victimisation”. The whistleblowing framework currently operates within the scope of employment law and complaints brought in relation to PIDA are dealt with by the employment tribunals. The legislation protects employees or “workers” from being subjected to either detriment or dismissal on the ground that they have made a protected disclosure.

22 A worker who blows the whistle, by making a protected disclosure in accordance with the criteria set out in Part IVA sections 43B to 43H of the Employment Rights Act 1996, has the right not to be unfairly dismissed or suffer a detriment as a result of having made that disclosure.

23 Currently, job applicants, in general, do not fall within the definitions of worker. However, section 49B of the ERA provides a power to the Secretary of State to make regulations prohibiting an NHS employer from discriminating against an applicant because it appears to the NHS employer that the applicant has blown the whistle. Section 49B was inserted into the ERA by sections 149(1) and (2) of the Small Business, Enterprise and Employment Act 2015.

Social workers in England

Regulation of social workers in England and associated clauses

24 Social work has existed as a profession for many years, but it has only been subject
to statutory regulation since 2001. Between 2001 and 1 August 2012, social workers and social work students were regulated by the General Social Care Council (“GSCC”). The GSCC was an executive, non-departmental public body in England established under Part 4 of the Care Standards Act 2000 (‘the CSA 2000’), sponsored by the Department of Health and abolished as part of an arm’s-length body review. Its functions were moved to the Health Professions Council which then became the ‘Health and Care Professions Council’ to reflect its wider remit (‘the HCPC’) under provisions in the Health and Social Care Act 2012. Part 4 of the CSA 2000 was amended by the HSCA 2012 to remove references to the GSCC and to reflect the transfer of regulation to the HCPC.

25 The Secretary of State has certain functions in relation to social care workers set out in section 67 of the CSA 2000, but may not exercise the following functions in relation to a person who is a registered social worker with HCPC: ascertaining what training is required by persons who are or wish to become registered social workers; and drawing up occupational standards in relation to registered social workers.

26 The principal legislation governing regulation by the HCPC is section 60 of the Health Act 1999. This provides for Her Majesty by Order in Council to make provision for the purpose of regulating a wide range of health professions, social workers and other care workers. The power is subject to a range of limitations, in particular the supplementary provisions in Schedule 3 to the 1999 Act. Regulation by HCPC is provided for by the Health and Social Work Professions Order 2001 (2002/254, ‘the 2001 Order’).

27 The HCPC is subject to oversight by the Professional Standards Authority (“the PSA”) which was established under the NHS Reform and Health Care Professions Act 2002 and which also oversees a number of other regulatory bodies. The 2001 Order provides for approval by the Privy Council of new rules and regulations made by HCPC in respect of the professions it regulates.

28 Relevant EU legislation is the Recognition of Professional Qualifications Directive 2005/36/EC (“the MRQP Directive”), as amended by Directive 2013/55. The MRQP Directive replaced 15 other Directives in the field of recognition of professional qualifications; and provides for a general system of recognition in relation to certain categories of professionals, which include social workers. The HCPC is the relevant competent authority in relation to social workers in England for the purposes of recognition of qualifications.

Approved Mental Health Professionals

29 Approved Mental Health Professionals (‘AMHPs’) have a key role in detaining mentally disordered patients under the Mental Health Act 1983 (‘the Mental Health Act’): they make applications for assessment and detention. AMHPs perform certain other functions, for example, in relation to community treatment orders and guardianship. The Mental Health Act provides for the approval of AMHPs and the approval of AMHP courses in England and Wales. In 2008, the Act was amended to allow professions other than social workers to qualify as AMHPs.

Best Interest Assessors

30 The Mental Capacity Act 2005 (‘the MCA 2005’) makes provision for deprivation of liberty safeguards to authorise a deprivation of liberty in a hospital or a care home. This entails six assessments-

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a. age assessment (to confirm the person is 18 or over);
b. no refusals assessment (to establish whether an authorisation would conflict with other existing authority for decision-making for that person, such as an advance decision to refuse treatment under the MCA 2005);
c. mental capacity assessment (to establish whether the relevant individual lacks capacity to decide whether they should be accommodated in the hospital or care home);
d. mental health assessment (to determine whether the relevant individual has a mental disorder within the meaning of the Mental Health Act);
e. eligibility assessment (this is met unless the person is ineligible to be deprived of their liberty under Schedule 1A to the MCA);
f. best interests assessment (to establish whether deprivation of liberty is occurring or is going to occur, and if so, whether it is in the best interests of the relevant individual to be deprived of liberty; necessary for them to be deprived of liberty in order to prevent harm to themselves; and a proportionate response to the likelihood of suffering harm and the seriousness of that harm) – see paragraphs 38 to 45 of Schedule A1 to the MCA 2005.

31 The relevant assessment to this Bill is f, the best interests assessment. The MCA 2005 and Regulations made under it provide for the selection of a Best Interests Assessor, and this Bill deals with the regulation of Best Interests Assessors.
Territorial extent and application

32 One substantive clause in Part 1 and three technical clauses in Part 3 extend to England, Wales, and Scotland. The remainder of the Bill’s provisions extend to England and Wales, with provision that amendment or repeal made by the Bill will have the same extent as the enactment which is amended or repealed (see clause 62(2)).

33 Clauses 8 and 9 of the Bill (Care and adoption proceedings in England and Wales) apply to England and Wales.

34 Both clauses apply to family law and proceedings which are not within the legislative competence of the National Assembly for Wales. As such no legislative consent motion is necessary.

35 Clause 9 also applies to the operation of adoption agencies in Wales. This part of the clause does fall within the legislative competence of the National Assembly for Wales. A legislative consent motion is being sought.

36 Clause 31 applies employment law in England, Wales, and Scotland. These are reserved matters in Scotland and not transferred in Wales and thus not within the legislative competence of the devolved Governments.

37 Save for clauses 8, 9, and 31 the matters to which the provisions of the Bill relate are within the legislative competence of the Scottish Parliament, the National Assembly for Wales, and the Northern Ireland Assembly. If there are later amendments to the Bill relating to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales, or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.

38 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.
Commentary on provisions of Bill

Part 1: Children

Chapter 1: Looked after children

Clause 1: Corporate parenting principles

39 This clause introduces seven key needs (collectively known as corporate parenting principles) which local authorities in England must have regard to whenever they exercise a function in relation to looked after children, relevant children and former relevant children (otherwise known as looked after children and care leavers). Subsection (2) sets out who these children are by reference to the definitions in sections 22(1), 23A(2) and 23C(1) of the Children Act 1989. The principles are applicable to all local authorities in England, whether or not they are (or were) the local authority responsible for looking after the child or responsible for the care leaver.

40 The first principle requires a local authority to have regard to the need to act in the best interests of, and to promote the physical and mental health and well-being of the children and young people to whom the clause applies.

41 The second principle requires a local authority to have regard to the need to encourage the children and young people to whom the clause applies to express their views, wishes and feelings.

42 The third principle requires local authorities to have regard to the need to take account of the views, wishes and feelings of children and young people to whom the clause applies.

43 The fourth principle requires a local authority to have regard to the need to help the children and young people to whom the clause applies to gain access to and get the best use of the services provided by the local authority, and by its relevant partners, as defined by section 10(4) of the Children Act 2004.

44 The fifth principle requires the local authority to have regard to the need to promote high aspirations amongst the relevant children and young people to whom the clause applies, and to have regard to the need to secure the best outcomes.

45 The sixth principle requires the local authority to have regard to the need the children and young people to whom the clause applies to be safe and for stability in their home lives, relationships and education or work.

46 The seventh principle requires a local authority to have regard to the need to prepare the children and young people to whom the clause applies for adulthood and independent living.

47 Subsection (3) defines the terms ‘local authority’ and ‘relevant partner’.

48 Subsection (4) of the clause also requires local authorities in England to have regard to any guidance issued by the Secretary of State as to the performance of the duty.

Clause 2: Local offer for care leavers

49 Subsection (1) requires local authorities in England to publish information about the services which it offers to care leavers as a result of its duties under the Children

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Act 1989 and other services it offers to everyone, which may assist care leavers in or in preparing for adulthood and independent living.

50 Subsection (2) specifies certain service and support areas as being some of those which may assist care leavers in, or in preparing for adulthood and independent living. These are: health and well-being; education and training; employment; accommodation; participation in society; and relationships.

51 Subsection (3) confirms that the local offer for care leavers encompasses services offered by others which the local authority would have had the power to offer itself.

52 Subsection (4) states that the information to be published is to be known as the local authority’s “local offer for care leavers”. Subsection (5) requires a local authority to keep its local offer under review, and enables the local authority to revise it from time to time. Before publishing its local offer, or any revised version of it, under subsection (6) a local authority has to consult persons who appear to it to be representative of care leavers in its area on which services and support may assist care leavers in or in preparing for adulthood and independent living.

53 Subsection (7) defines “care leavers” as those who are defined in the Children Act 1989 as either ‘eligible children’, ‘relevant children’, ‘persons under 25 who are ‘former relevant children’ and those who qualify for advice and assistance under section 24 of the Children Act 1989.

**Clause 3: Advice and support on request**

54 This clause extends certain duties which a local authority has under section 23CA of the Children Act 1989 towards former relevant children (as defined by section 23C of the Children Act 1989) who have reached the age of 21 but who are under 25 and who have informed the local authority that they are pursuing or wish to pursue a course of education or training.

55 Subsection (1) of the clause inserts a new section 23CZB into the Children Act 1989, subsection (2) of which imposes a set of duties on a local authority where a former relevant child requests advice and support, regardless of whether the child intends to pursue a course of education and training. Subsection (3) of 23CZB provides that the first duty is for the local authority to appoint a personal adviser for the child if he or she asks for one, until such time as he or she reaches the age of 25 or informs the local authority that a personal adviser is no longer required.

56 Subsection (4) of 23CZB provides that the second duty is for the responsible local authority to carry out an assessment of the young person’s needs and to prepare a pathway plan for them. Subsection (5) of 23CZB defines an assessment of needs under subsection (4) as an assessment in order to determine a) whether services offered by that authority may help to meet his or her needs and b) if this is the case, what advice and support it would be appropriate for the responsible local authority to provide in order to help the young person obtain those services. Subsection (5) of clause 3 amends section 23E of the Children Act 1989 to add a definition of a pathway plan under this clause as “a plan setting out the advice and support that the local authority intend to provide”.

57 Subsection (6) of 23CZB places a duty on the responsible local authority to provide the former relevant child with any advice and support which the assessment identified as appropriate.

58 Subsection (7) of 23CZB provides that a local authority must offer to provide a
former relevant child with advice and support if they are not already receiving it, as soon as possible after they reach the age of 21, and at least once every 12 months thereafter.

59 Subsection (8) of 23CZB defines the term “former relevant child”.

60 Subsection (3) of clause 3 revises wording within section 23CA of the Children Act 1989 (which provides for a personal adviser where a young person is pursuing education and training) so that it is consistent with the wording around provision of a personal adviser within this Bill.

61 Subsection (4) of clause 3 addresses the scenario in which a young person is entitled to a personal adviser under both section 23CA and new section 23CZB of the Children Act 1989. The subsection confirms that a local authority may be under a duty to appoint or maintain the appointment of a personal adviser under one of the provisions, notwithstanding that its duty to do so under the other had ceased. The subsection also confirms that one personal adviser may discharge the local authorities duties under both section 23CA and new section 23CZB of the Children Act 1989.

62 Subsections (5) to (10) of clause 3 make necessary amendments to section 23E of the Children Act 1989 (which describe what pathway plans and assessments of needs involve) consequent to the creation of the duties imposed by this clause.

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

63 This clause adds a new section 23ZZA into the Children Act 1989. Subsections (1) and (2) place a duty on local authorities in England to make advice and information available to those with parental responsibility, designated teachers in maintained schools and academies, and any other person the authority considers appropriate, for the purpose of promoting the educational achievement of relevant children. Subsection (6) defines relevant children as children who are no longer looked after by a local authority (as defined by the Children Act 1989), because they are the subject of an adoption, special guardianship or child arrangements order.

64 Subsection (3) also enables a local authority in England to do anything else which it considers appropriate with a view to promoting the educational achievement of relevant children in its area.

65 Subsections (4) and (5) require the local authority to appoint an officer employed by them or another authority to discharge the duty to provide advice and information in subsections (1) and (2).

66 Subsection (7) makes clear that duty will fall on the local authority responsible for the area where the child is receiving free early years provision, where they are attending school or where they are accessing alternative educational provision.

Clause 5: Maintained schools: staff member for previously looked after children

67 This clause adds a new section 20A to the Children and Young Persons Act 2008. Subsection (1) places a duty on the governing body of a maintained school in England to designate a member of staff at the school to have responsibility for promoting the educational achievement of certain previously looked after pupils. Under subsection (2), the ‘relevant pupils’ for whom the designated staff member will have responsibility are those who are no longer looked after because they are the subject of an adoption, special guardianship or child arrangements order.

These Explanatory Notes relate to the Children and Social Work Bill [HL] as brought from the House of Lords on 24 November 2016 (Bill 99)
Clause 6: Academies: staff member for looked after and previously looked after pupils

71 This clause inserts a new section 2E into the Academies Act 2010. Together, subsections (1) and (2) of 2E impose provision in all existing and new academy agreements which requires the proprietor of an academy to designate a member of staff (‘the designated person’) to have responsibility for promoting the educational achievement of ‘relevant pupils’, and to ensure the designated person undertakes training and has regard to any guidance issued by the Secretary of State.

Subsection (3) gives the Secretary of State the power to make regulations to require an academy agreement to prescribe the necessary qualifications or experience of the designated person and to require the designated person to have regard to guidance issued by the Secretary of State in relation to such qualifications and experience. Subsection (6) stipulates that any regulations which modify existing academy agreements so as to prescribe qualifications or experience will be subject to the affirmative procedure.

73 ‘A relevant pupil’ is defined in subsection (4) as a registered pupil at the Academy or, in respect of a 16 to 19 Academy, a person receiving education there, and who is looked after by the local authority (as defined by the Children Act 1989) or who is no longer looked after because of an adoption, special guardianship or child arrangements order. Subsection (5) confirms that the term ‘looked after’ has the same meaning as it does in the Children Act 1989.

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

74 This clause amends section 20 of the Children and Young Persons Act 2008 to require the governing body of a maintained school in England to ensure that the designated teacher for looked after pupils has regard to any guidance issued by the Secretary of State. Previously, section 20 of the 2008 Act required only the governing body to have regard to such guidance.

Clause 8: Care orders: permanence provisions

75 This clause extends the definition of ‘permanence provisions’ as it appears in the Children Act 1989 so, in addition to considering the matters currently included in s31(3B) of that Act, the courts will also be required to consider provisions in the plan that set out the impact on the child concerned of any harm they have suffered or are likely to have suffered; their current and future needs (including needs arising from that impact); and the way in which the long term plan for the child’s upbringing would meet all of those current and future needs.

76 A requirement for local authorities to provide evidence to court on the matters mentioned above will be set out in the regulations made under section 31A of the Children Act 1989.

These Explanatory Notes relate to the Children and Social Work Bill [HL] as brought from the House of Lords on 24 November 2016 (Bill 99)
Clause 9: Adoption: duty to have regard to relationship with adopters
77 This clause amends the Adoption and Children Act 2002 and requires courts and adoption agencies when coming to a decision relating to the adoption of a child, to always consider that child’s relationship with their prospective adopters, if the child has been placed with those prospective adopters.

Clause 10: Chapter 1: consequential amendments
78 This clause introduces changes to other legislation, consequential on the contents of Chapter 1 of the Bill, included in Schedule 1.

Chapter 2: Other provision relating to children in England

Clause 11: Power to secure proper performance
79 This clause enables the Secretary of State to intervene in a Combined Authority in England established under section 105 of the Local Democracy, Economic Development and Construction Act 2009, where children’s social care functions have been transferred from a local authority in England to that Combined Authority, and where such functions are not being performed to an adequate standard.

80 Subsection (1) extends, to Combined Authorities, the Secretary of State’s powers of intervention under section 497A of the Education Act 1996, so far as they relate to the functions specified in section 50 of the Children Act 2004. Subsection (2) extends, to Combined Authorities, the Secretary of State’s powers of intervention under section 497A of the Education Act 1996 so far as they relate to the functions specified in section 15 of the Childcare Act 2006.

Clause 12: Child Safeguarding Practice Review Panel
81 This clause adds a new section 16A into the Children Act 2004. References to subsections below are to subsections in that new section.

82 Subsection (1) imposes a duty on the Secretary of State to establish a Child Safeguarding Practice Review Panel.

83 Subsection (2) allows the Secretary of State the discretion to make any arrangements that she considers appropriate for the establishment of the Panel. Further details are set out in subsection (6).

84 Subsection (3) gives the Secretary of State the power to appoint members of the Panel including a chairperson. Subsection (4) allows the Secretary of State to set a particular appointment period should she choose to do so for the Panel members. Subsection (5) gives the Secretary of State the power to remove the chair or member appointed if she is satisfied that they have become unfit or unable to discharge their functions or have behaved in a way not compatible with continuing in office.

85 Subsection (7) enables the Secretary of State to provide staff, facilities or other assistance to the Panel.

86 Subsection (8) gives the Secretary of State the discretion to pay the chair and members of the Panel or to pay expenses.

Clause 13: Functions of the Child Safeguarding Practice Review Panel
87 This clause adds a new section 16B into the Children Act 2004. References to subsections below are to subsections in that new section.

These Explanatory Notes relate to the Children and Social Work Bill [HL] as brought from the House of Lords on 24 November 2016 (Bill 99)
88 Subsection (1) sets out the functions of the new Child Safeguarding Practice Review Panel. These are, in accordance with regulations 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 it considers appropriate, to arrange for such cases to be reviewed under their supervision.

89 Subsection (2) explains that the purpose of these reviews is to identify what improvements should be made by safeguarding partners or others to safeguard and promote the welfare of children.

90 Subsection (3) specifies the actions the Panel must take when they arrange for a case to be reviewed under their supervision. These are:

a) to ensure the reviewer provides a report on the outcome of the review;

b) to ensure that the reviewer (i) makes satisfactory progress and (ii) that the report is of satisfactory quality.

c) to provide the report to the Secretary of State.

91 Subsection (4) specifies that the Panel must publish the report, unless they consider it inappropriate to do so.

92 Subsection (5) states that if the Panel consider it inappropriate to publish the report, they must publish any information relating to the improvements that should be made following the review that they consider it appropriate to publish.

93 Subsection (6) allows the Secretary of State to make regulations about various matters relating to the functions of the Panel. These may include:

a) the 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;

b) eligibility for appointment as a reviewer;

c) the selection process for the appointment as 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;

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.

94 Subsection (7) specifies that the Panel must have regard to any guidance given by the Secretary of State in connection with its functions.

95 Subsection (8) states that guidance given by the Secretary of State may include

These Explanatory Notes relate to the Children and Social Work Bill [HL] as brought from the House of Lords on 24 November 2016 (Bill 99)
guidance about circumstances in which it may be appropriate for a serious child safeguarding case to be reviewed, matters to be taken into account in deciding whether a review is making satisfactory progress or whether a report is of satisfactory quality.

96 Subsection (9) states a ‘reviewer’ can be one or more persons who are appointed to review a case under the supervision of the Panel. This subsection also defines what is meant by ‘safeguarding partners’, ‘serious child safeguarding cases’ and the term ‘serious harm’.

Clause 14: Events to be notified to the Panel

97 This clause adds a new section 16C into the Children Act 2004. References to subsections below are to subsections in that new section.

98 Subsection (1) requires local authorities in England to notify the Child Safeguarding Practice Review Panel of certain events relating to children which occur in their area. These events relate to circumstances where a local authority in England knows or suspects that a child has been abused or neglected, and the child:

a) dies or is seriously harmed in the local authority’s area, or

b) dies or is seriously harmed outside England but while normally resident in the local authority’s area.

99 Subsection (2) sets out the requirement for a Local Authority in England to have regard to any guidance issued by the Secretary of State in connection with its functions under this section.

100 Subsection (3) defines what is meant by ‘serious harm’ for the purposes of this section.

Clause 15: Information

101 This clause adds a new section 16D into the Children Act 2004. References to subsections below are to subsections in that new section.

102 The clause sets out the requirement on persons or bodies to supply information to the Child Safeguarding Practice Review Panel on request. Subsection (1) specifies that the Panel can request that information is supplied to the Panel, a reviewer or another person or body specified in the request, for the purpose of enabling or assisting the Panel with the performance of a function conferred by 16B.

103 Subsection (2) states that a person or body requested to provide information under this section must comply with the request.

104 Subsection (3) allows the Panel to apply for a High Court or county court injunction to enforce the request for information, where the recipient of the request does not comply with the request.

105 Subsection (4) sets out that the information may be used by the Panel, reviewer or other person or body to whom it is provided, only for the purpose of enabling or assisting the Panel to perform its functions.

106 Subsection (5) specifies the meaning of the term ‘reviewer’ in this section.

Clause 16: Local arrangements for safeguarding and promoting welfare of children

107 This clause adds a new section 16E into the Children Act 2004. References to subsections below are to subsections in that new section.

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108 Subsection (1) requires safeguarding partners for a local authority area to make arrangements for themselves and relevant agencies they consider appropriate to work together in exercising their functions, so far as those functions are exercised for the purpose of safeguarding and promoting the welfare of children in the area.

109 Subsection (2) requires those arrangements to include arrangements for safeguarding partners to work together to identify and respond to the needs of children in the area.

110 Subsection (3) includes two definitions:

a) ‘relevant agency’, in relation to a local authority area in England, is a person who is specified in regulations made by the Secretary of State and who exercises functions in relation to children in the local authority area;

b) ‘safeguarding partner’, in relation to a local authority area in England, is the local authority, a clinical commissioning group and the chief officer of police within the local authority area.

Clause 17: Local child safeguarding practice reviews

111 This clause adds a new section 16F into the Children Act 2004. References to subsections below are to subsections in that new section.

112 Subsection (1) sets out the requirement on local safeguarding partners to:

a) identify serious child safeguarding cases which raise issues of importance to the area, and

b) where they consider it appropriate, to arrange for those cases to be reviewed under their supervision.

113 Subsection (2) explains that the purpose of such reviews is to identify any improvements that should be made by persons in the area to safeguard and promote the welfare of children.

114 Subsection (3) specifies the actions the safeguarding partners must take when they arrange for a case to be carried out under their supervision. These are to:

a) ensure that the reviewer provides a report on the outcome of the review;

b) ensure that the reviewer (i) makes satisfactory progress and (ii) that the report is of satisfactory quality;

c) provide the report to the Secretary of State and the Child Safeguarding Practice Review Panel.

115 Subsection (4) specifies that the safeguarding partners must publish the report, unless they consider it inappropriate to do so.

116 Subsection (5) specifies that if the safeguarding partners consider it inappropriate to publish the report, they must publish any information relating to the improvements that should be made following the review that they consider it appropriate to publish.

117 Subsection (6) allows the Secretary of State to make regulations about various issues relating to local child safeguarding practice reviews. These may include:

a) the criteria to be taken into account by the safeguarding partners in determining which serious child safeguarding cases raise issues of

These Explanatory Notes relate to the Children and Social Work Bill [HL] as brought from the House of Lords on 24 November 2016 (Bill 99)
importance in relation to the area;

b) the appointment or removal of a reviewer by the safeguarding partners, including provision for a reviewer to be appointed by the safeguarding partners from a list provided by the Secretary of State;

c) the time when a report should be provided to the Secretary of State or the Child Safeguarding Practice Review Panel, or published;

d) the procedure for a review;

e) the form and content of a report.

118 Subsection (7) specifies the meaning of the term ‘reviewer’ in this section.

Clause 18: Further provision about arrangements

119 This clause adds a new section 16G into the Children Act 2004. References to subsections below are to subsections in that new section.

120 Subsection (1) states that the provisions in section 16G apply to the arrangements set out in sections 16E and 16F.

121 Subsection (2) requires the safeguarding partners to publish the arrangements they make under sections 16E and 16F.

122 Subsection (3) requires the published arrangements to include provision for scrutiny by an independent person of the effectiveness of the arrangements.

123 Subsection (4) requires the safeguarding partners and relevant agencies to act in accordance with the arrangements.

124 Subsection (6) enables the Secretary of State to make regulations which provide for enforcement of the duty to act in accordance with the arrangements, if the Secretary of State considers that no other appropriate means of enforcement is appropriate. These regulations may not create criminal offences. Subsection (5) sets out that these regulations can apply to bodies who are specified as a ‘relevant agency’ in regulations made under section 16E(3), inserted by clause 16 of this Bill.

125 Subsection (7) requires the safeguarding partners to prepare and publish, at least annually, a report on the work that they and the relevant agencies for the local authority area have done as a result of the arrangements and how effective the arrangements have been in practice.

Clause 19: Information

126 This clause adds a new section 16H into the Children Act 2004. References to subsections below are to subsections in that new section.

127 The clause sets out the requirement on persons or bodies to supply information to the safeguarding partners on request.

128 Subsection (1) specifies that the safeguarding partners can request that information is supplied to the safeguarding partners, relevant agencies, a reviewer or another person or body specified in the request, for the purpose of enabling or assisting the performance of the functions set out in sections 16E and 16F.

129 Subsection (2) states that a person or body requested to provide information under this section must comply with the request.
130 Subsection (3) allows the safeguarding partner that made the request for information to apply for a High Court or county court injunction to enforce the request for information where the recipient of the request does not provide comply with the request.

131 Subsection (4) sets out that the information may be used by the person to whom it is provided, only for the purpose of enabling or assisting the performance of functions conferred by section 16E or 16F.

Clause 20: Funding

132 This clause adds a new section 16I into the Children Act 2004. References to subsections below are to subsections in that new section.

133 Subsection (1) allows the safeguarding partners for a local authority area in England to make payments either directly, or by contributing to a fund from which payments may be made, towards expenditure incurred in connection with the arrangements made under sections 16E and 16F.

134 Subsection (2) allows payments including remuneration, allowances or expenses to be made by the safeguarding partners to a reviewer or independent person.

135 Subsection (3) allows the safeguarding partners to provide resources to any person for the purposes connected with the arrangements under section 16E or 16F. These resources may include (but are not limited to) staff, goods, services and accommodation.

136 Subsection (4) allows the relevant agencies for a local authority area in England to make payments either directly, or by contributing to a fund from which payments can be made, towards expenditure incurred in connection with arrangements made under section 16E.

137 Subsection (5) specifies that the ‘independent person’ in this section means the same as mentioned in section 16G(3).

Clause 21: Combining safeguarding partner areas and delegating functions

138 This clause adds a new section 16J into the Children Act 2004. References to subsections below are to subsections in that new section.

139 Subsection (1) enables the safeguarding partners for two or more local authority areas in England to agree that their areas are treated as a single area for the purposes of sections 16E to 16I and subsections (3) to (5) of this section.

140 Subsection (2) provides that references in sections 16E to 16I and subsections (3) to (5) of this section to a ‘local authority area’ are to be read in accordance with any such agreement under subsection (1) of this section.

141 Subsection (3) provides that where safeguarding partners for two or more local authority areas have agreed their areas are to be treated as a single area for the purposes of sections 16E to 16I and subsections (3) to (5) of this section, those authorities may arrange for one of them to carry out functions under sections 16E to 16I on behalf of the other.

142 Subsection (4) allows clinical commissioning groups, where one clinical commissioning group is a safeguarding partner for the same local authority area as another clinical commissioning group, to arrange for one of them to carry out functions under sections 16E to 16I on behalf of the other.

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143 Subsection (5) allows chief officers of police, where one chief officer of police is a safeguarding partner for the same local authority area as another chief officer of police, to arrange for one of them to carry out functions under sections 16E to 16I on behalf of the other.

Clause 22: Guidance by the Secretary of State

144 This clause adds a new section 16K into the Children Act 2004. References to subsections below are to subsections in that new section.

145 Subsection (1) specifies that safeguarding partners and relevant agencies for a local authority area in England must have regard to any guidance given by the Secretary of State in connection with functions under sections 16E to 16F.

146 Subsection (2) states that guidance given by the Secretary of State in respect of functions conferred by 16F (local child safeguarding practice reviews) may include guidance about circumstances in which it may be appropriate for a serious child safeguarding case to be reviewed and matters to be taken into account in deciding whether a review is making satisfactory progress, or whether a report is of satisfactory quality.

Clause 23: Interpretation

147 This clause adds a new section 16L into the Children Act 2004. Section 16L sets out a ‘reviewer’, ‘safeguarding partner’, ‘serious child safeguarding cases’ and ‘relevant agency’ as having the meanings given by section 16F(7), 16E(3), 16B(9) and 16E(3) respectively.

Clause 24: Child death reviews

148 This clause adds a new section 16M into the Children Act 2004. References to subsections below are to subsections in that new section.

149 Subsection (1) sets out the requirement on child death review partners for a local authority area in England to make arrangements for the review of each death of a child normally resident in the area.

150 Subsection (2) allows the child death review partners, if they consider it appropriate, to make arrangements for the review of a death in their area of a child not normally resident there.

151 Subsection (3) provides for the partners to make arrangements for the analysis of information about deaths reviewed under section 16M.

152 Subsection (4) explains that the purpose a review or the analysis is:
   a) to identify any matters relating to the death or deaths generally, that are relevant to the welfare of children in the area or to public health and safety; and
   b) to consider whether it would be appropriate for anyone to take action in relation to any matters identified.

153 Subsection (5) sets out the requirement on child death review partners, where they consider it would be appropriate for a person to take action mentioned in subsection 4(b), to inform that person.

154 Subsection (6) specifies that the child death review partners must, at such intervals as they consider appropriate, prepare and publish a report on:

*These Explanatory Notes relate to the Children and Social Work Bill [HL] as brought from the House of Lords on 24 November 2016 (Bill 99)*
a) what they have done as a result of the arrangements under this section; and

b) how effective the arrangements have been in practice.

Clause 25: Information

155 This clause adds a new section 16N into the Children Act 2004. References to subsections below are to subsections in that new section.

156 Subsection (1) specifies that any of the child death review partners in a local authority area in England can, for the purposes of enabling or assisting the performance of the child death review partner’s functions, request a person or body to provide information to:

a) the child death review partner or any other child death review partner in the area; or

b) another person or body.

157 Subsection (2) states that a person or body requested to provide information under this section must comply with the request.

158 Subsection (3) allows the child death review partner that made the request to apply for a High Court or county court injunction to enforce the request for information, where the recipient of the request does not comply with the request.

159 Subsection (4) sets out that the information may be used by the person or body to whom it is provided, only for the purpose mentioned in subsection (1).

Clause 26: Funding

160 This clause adds a new section 16O into the Children Act 2004. References to subsections below are to subsections in that new section.

161 Subsection (1) allows the child death review partners for a local authority area in England to make payments towards expenditure incurred in connection with the arrangements made under section 16M by:

a) making payments directly, or

b) contributing to a fund out of which payments may be made.

162 Subsection (2) allows the child death review partners to provide staff, goods, services, accommodation or other resources to any person for purposes connected with the child death review arrangements under section 16M.

Clause 27: Combining child death review partner areas and delegating functions

163 This clause adds a new section 16P into the Children Act 2004. References to subsections below are to subsections in that new section.

164 Subsection (1) enables the child death review partners for two or more local authority areas in England to agree that their areas are treated as a single area for the purposes of sections 16M to 16O and subsections (3) and (4) of this new section 16P.

165 Subsection (2) provides that references in sections 16M to 16O and subsections (3) and (4) of this section to a ‘local authority area’ are to be read in accordance with any such agreement under subsection (1) of this new section 16P.

166 Subsection (3) provides that where child death review partners for two or more
local authority areas have agreed their areas are to be treated as a single area for the purposes of sections 16M to 16O and subsections (3) and (4) of this new section 16P, those authorities may arrange for one of them to carry out functions under sections 16M to 16O on behalf of the other.

167 Subsection (4) allows clinical commissioning groups, where one clinical commissioning group is a safeguarding partner for the same local authority area as another clinical commissioning group, to arrange for one of them to carry out functions under sections 16M to 16O on behalf of the other.

Clause 28: Guidance and interpretation

168 This clause adds a new section 16Q into the Children Act 2004. References to subsections below are to subsections in that new section.

169 Subsection (1) specifies that child death review partners for a local authority area in England must have regard to any guidance given by the Secretary of State in connection with functions under sections 16M to 16P.

170 Subsection (2) states that in this new section 16 Q, and in sections 16M to 16P, ‘child death review partners’ means:

a) the local authority; and
b) any clinical commissioning group for an area any part of which falls within the local authority area.

Clause 29: Regulations under provisions inserted by sections 12, 15 and 16

171 This clause amends section 66(3) of the Children Act 2004. It provides that regulations under section 16B of the 2004 Act, inserted by clause 12 (Functions of the Panel) and under section 16E of the Act, inserted by clause 16 (Local arrangements for safeguarding and promoting welfare of children) are to be made by the affirmative procedure. It also enables regulations made under section 16F of the Act, inserted by clause 16 (Local child safeguarding practice reviews), to be made by the affirmative procedure, if made alongside regulations made under section 16B.

Clause 30: Abolition of Local Safeguarding Children Boards

172 This clause removes provisions in the Children Act 2004 relating to Local Safeguarding Children Boards which are replaced by the new safeguarding arrangements described above.

Clause 31: Pre-employment protection of whistle-blowers

173 Clause 31 amends Part 5A of the Employment Rights 1996 (‘the ERA’) (clause 31(1)) and inserts new whistleblowing arrangements after section 49B (clause 31(4)). The new section 49C gives the Secretary of State a power, through Regulations, to prohibit relevant employers (as defined in new section 49C(7)) in England, Scotland and Wales from discriminating against a person who applies for a children’s social care position (an “applicant”) because it appears to the employer that the applicant has made a protected disclosure (within the meaning given by section 43A of the Employment Rights Act 1996). Sections 49C(2) and 49C(3) respectively define the meaning of ‘position’ in a contractual context and in terms of the meaning of ‘children’s social care position’. Discrimination for the purposes of section 49C(1) is defined at section 49C(4). Section 49C(5) sets out what regulations may do and section 49C(6) clarifies that the application of section 236(5) of the ERA is not
affected by section 49C(5)(f) regulations making incidental or consequential provision. Section 49C(8) defines local authority in England for these purposes and section 49C(9) defines ‘children’s social care functions’. Sections 49C(10) and 49C(11) respectively set out that the Secretary of State must consult Welsh and Scottish Ministers before making regulations under this section. Section 49C(12) defines the term ‘worker’ and the meaning of ‘worker of a relevant employer’ for the purposes of 49(5)(a).

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

175 In addition, the Secretary of State through such regulations may also confer jurisdiction (including exclusive jurisdiction) on employment tribunals or the Employment Appeal Tribunal, make provisions for the grant or enforcement of remedies specified by a court or tribunal, and make provision for the making of awards of compensation calculated in accordance with the regulations.

176 Sub-sections (5) and (6) are technical insertions in light of the new whistleblowing arrangements inserted by the new section 49C. [Amanda/Joanna]

Clause 32: Chapter 2: consequential amendments

177 This clause introduces changes to other legislation, consequential on the contents of Chapter 2 of the Bill, included in Schedule 1.

Part 2: Social workers etc in England

Clause 33: Social Work England

178 This clause creates a new regulator of social workers in England.

179 Subsection (1) establishes a body corporate called Social Work England, and subsection (2) determines that Social Work England will be referred to as “the regulator” throughout Part 2 of the Bill.

180 Subsection (3) signals that further provision about the regulator is made in Schedule 1.

181 Subsections (4) and (5) give the Secretary of State the power to make regulations to rename the regulator and allows for such regulations to include consequential amendments in relation to any name change.

Clause 34: Over-arching objective

182 Subsection (1) of this clause sets out that the overarching objective of the regulator in exercising its functions is the protection of the public.

183 Subsection (2) states that the pursuit by the regulator of its overarching objective involves the pursuit of three objectives: protecting, promoting and maintaining health, safety and well-being of the public; promoting and maintaining public confidence in social workers in England; and promoting and maintaining proper professional standards for social workers in England.

Clause 35: Advisers

184 Sub-section (1) of this clause enables the Secretary of State, through regulations, to

These Explanatory Notes relate to the Children and Social Work Bill [HL] as brought from the House of Lords on 24 November 2016 (Bill 99)
permit or require Social Work England to appoint one or more individuals or panels of individuals for the purpose of advising it on matters relating to its functions and to make provision in regulations regarding the functions of those so appointed.

185 Sub-sections (2) and (3) allow for regulations to make further provision in connection with such appointments, for example, provision for payments, staff, facilities or other assistance in respect of those appointed.

Clause 36: Registration

186 Subsection (1) of this clause requires Social Work England to keep a register of social workers in England. Subsection (2) provides that the Secretary to State may, through regulations, also require Social Work England to keep a register of those who are undertaking education or training in England to become social workers.

187 Subsection (3) provides that the Secretary of State, through regulations, may authorise Social Work England to appoint a member of staff as a registrar and make provision about the functions of the registrar. Subsection (3) also allows regulations to make other provision in connection with the keeping a register.

188 Subsection (4) provides a list of examples of provisions that may be included in regulations made under subsection (3), such as provision about who can be registered and stay registered; different categories of registration; suspension and removal from the register etc.

Clause 37: Restrictions on Practice and Protected Titles

189 This clause allows the Secretary of State to make regulations imposing prohibitions or restrictions in connection with the carrying out of social work in England; the use, in relation to social work in England, of titles or descriptions specified in the regulations; and the holding out of a person as being qualified to carry out social work in England. The provisions could enable the carrying out of social work functions to be restricted to qualified social workers.

Clause 38: Professional Standards

190 Subsection (1) of this clause requires the regulator to determine and publish professional standards for social workers in England.

191 Subsection (2) of this clause requires the regulator to determine and publish standards of conduct or ethics for registered students if it is required, by regulations made under clause 33(2) described above, to keep a register of students.

192 Subsection (3) of this clause requires the regulator to consult with such persons it considers appropriate and obtain the Secretary of State’s approval for the standard being set, before determining standards under this clause.

193 Subsection (4) of this clause provides that the Secretary of State, may by regulations, make provision about arrangements for assessing whether a person meets proficiency standards.

194 Subsection (5) provides that if the Secretary of State has made regulations relating to approved mental health professionals, under the regulation making power under clause 42(1) described below, and has, therefore, amended section 114ZA of the Mental Health Act 1983, 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.

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Clause 39: Education and Training

195 Subsection (1) of this clause requires the regulator, in relation to people who are or who wish to become social workers in England, to determine and publish standards of education or training.

196 Subsection (2) of this clause requires the regulator to consult with such persons it considers appropriate and obtain the Secretary of State’s approval for the standard being set, before determining standards under this clause.

197 Subsections (3) and (4) enable the Secretary of State, by regulations, to make provision for the regulator to operate an approval scheme for: (a) courses of education or training for people who are or wish to become social workers in England; (b) qualifications for people who are or who wish to become social workers in England, and to make provision in connection with this scheme

198 Subsection (5) provides a list of the matters that regulations, made by the Secretary of State under subsection (3) and (4), may make provision for.

199 Subsection (6) relates to the appointment of people to carry out inspections under the approval scheme referred to at subsection (5) and allows regulations to make provisions for payments, staff, facilities or other assistance in respect of these people.

Clause 40: Discipline and Fitness to Practise

200 Subsection (1) requires the regulator to make arrangements for protecting the public from social workers in England whose fitness to practise is impaired and to make arrangements for taking other disciplinary action against social workers in England.

201 Subsection (2) allows the Secretary of State to make regulations to require the regulator to make arrangement for taking disciplinary action against registered students. Subsection (3) enables the Secretary of State, by regulations, to make further provision about fitness to practise as a social worker in England, and discipline of social workers in England and registered students, and about the arrangements referred to at subsections (1) or (2).

202 Subsections (4) provides a list of the matters that regulations, made by the Secretary of State under subsection (3), may address including, for example, the circumstances in which a person’s fitness to practise is impaired or disciplinary action may be taken; the appointment of assessors, examiners or legal or other advisers; and temporary measures that may be taken against a person pending the outcome of an investigation. Subsection (5) relates to the appointment of people to carry out functions in relation to fitness to practise or discipline and allows for provisions that may be made about persons appointed under the regulations to include provision about payments, staff, facilities or other assistance in respect of these people.

Clause 41: Offences

203 This clause allows the Secretary of State, by regulations, to create offences in connection with registration in a register mentioned in clause 36; prohibitions or restrictions imposed under clause 37; failing to comply with a requirement to provide documents or other information or to attend and give evidence under regulations under clause 36 or 40; or providing false or misleading information or evidence in response to a requirement under regulations under clause 36 or 40.
204 The regulations under this clause must provide for the offence to be triable on a summary basis only and the offences may not be punishable with imprisonment.

**Clause 42: Approval of courses for approved mental health professionals**

205 This clause allows the Secretary of State, through regulations, to amend section 114ZA of the Mental Health Act 1983, which deals with the approval of courses for approved mental health professionals in England. Section 114ZA currently provides that the Health and Care Professions Council may approve courses for persons who are, or wish to become, approved to act as an Approved Mental Health Professional by a local authority in England, and requires the Health and Care Professions Council to publish a list of approved courses, and a list of courses that are no longer approved.

206 Subsection (1) allows regulations made under this clause to amend section 114ZA to transfer the functions of the Health and Care Professions Council set out in that section to Social Work England and to give Social Work England the power to charge fees for approving courses under that section.

207 Subsection (2) allows regulations made under sub-section (1) to include further provision for other matters in connection with the approval of courses or the charging of fees under that section.

208 Subsection (3) provides a list of the matters, by way of example, that regulations, made by the Secretary of State under subsection (1), may address with regards to the approval of courses for approved mental health professionals.

209 Subsection (4) enables regulations to make provision for payments, staff, facilities or other assistance in respect of inspectors that may be appointed under regulations for the purposes of approval of courses.

210 Subsection (5) provides that if regulations made under this clause give Social Work England the power to charge fees for the approval of courses, clauses 44(2) – (7) (Fees) are to apply for the purposes of this clause as they apply for the purposes of clause 44.

**Clause 43: Approval of courses for best interest assessors**

211 This clause amends Paragraph 130 of Schedule A1 to the Mental Capacity Act 2005 to allow training in connection with best interest assessments to be specified by Social Work England or the Secretary of State.

212 The amendment to Paragraph 130 will allow regulations made under Paragraph 129 of the Mental Capacity Act 2005, in relation to a person’s training in connection with best interest assessments, to include provision for particular training to be specified by Social Work England or the Secretary of State, otherwise than in the regulations. The regulations may also give Social Work England the power to charge a fee for specifying training, and if regulations do give a power to charge a fee, clauses 44(2) – (7) (Fees) are to apply for the purposes of this clause as they apply for the purposes of clause 41.

**Clause 44: Fees**

213 Subsection (1) allows the Secretary of State, through regulations, to confer power on the regulator to charge fees in connection with: registration or continued registration in a register as mentioned in clause 36; assessing whether a person meets a professional standard relating to proficiency as mentioned in clause 38(2);
approval or continued approval of an education or training course or qualification in accordance with a scheme mentioned in clause 39.

214 Subsections (2) and (3) require the regulator to set the level of the fees in accordance with any provisions in the regulations; and to consult any persons it considers appropriate and to obtain the approval of the Secretary of State before determining the level of any fee.

215 Subsections (4) allows for regulations to authorise fees to be set at a level that exceeds the cost of things in respect of which they are charged but subsection (5) states that regulations must require the level of any fees to be set with a view to ensuring that, in so far as possible, the regulator’s income does not exceed its expenses.

216 Regulations under this section may include provision about the collection and recovery of fees and must require the regulator to pay any fee income to the Secretary of State unless the Secretary of State (with consent of the Treasury) directs otherwise.

Clause 45: Grants

217 This clause permits the Secretary of State to fund the regulator through making grant payments to it, which may be made subject to any conditions the Secretary of State considers appropriate.

Clause 46: Information and advice

218 This clause permits the regulator to publish or disclose information, or to give advice, about any matter relating to its functions.

219 Subsection (2) allows the Secretary of State, through regulations, to require Social Work England to publish or disclose information, or give advice, about any matter relating to its functions. Regulations may also make other provision to supplement subsection (1) of this clause.

Clause 47: Duty to co-operate

220 This clause requires the regulator to co-operate where appropriate with the organisations listed in subsection (1) in the exercise of its functions. The Secretary of State may, by regulations, require the regulator to co-operate with others.

221 Under section 67(3) of the Regulation and Inspection of Social Care Wales Act 2016, the current regulator of social workers in Wales, the Care Council for Wales, is renamed as Social Care Wales. This provision is not yet fully in force. Subsection (2) of this clause provides for acknowledgement of this name change in due course.

Clause 48: Information for Secretary of State

222 This clause requires the regulator to provide any information that the Secretary of State requests in relation to the exercise of its functions.

Clause 49: Default powers

223 The provisions in this clause enable the Secretary of State to take action by giving the regulator a remedial direction in the event that the regulator has defaulted in performing any of its functions and not remedied the default, or is likely to default in performing any function. Subsection (2) enables the Secretary of State to make further provision about remedial directions and how they are enforced, through regulations.

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224 Subsection (3) provides a list of examples of the matters that regulations, made by the Secretary of State under subsection (2), may make provision for.

Clause 50: Oversight by the Professional Standards Authority for Health and Social Care

225 This clause makes provision for the Professional Standards Authority for Health and Social Care (the ‘PSA’) to oversee Social Work England by making amendments to existing legislation as set out in Schedule 3.

Clause 51: Conferral of functions and sub-delegation

226 Subsection (1) of this clause allows regulations under Part 2 to confer functions on the regulator or a Minister of the Crown. Subsection (2) allows regulations under Part 2 to confer discretions on the same.

227 Subsection (3) enables regulations made under Part 2 to (a) confer power on the regulator to make rules and (b) make provision in relation to the procedure for making rules. This could include a requirement, in regulations, for the regulator to obtain the Secretary of State’s approval before making rules of a specified description.

228 Subsection (4) allows for provision that may be made in regulations under Part 2 under the clause titled Regulation: general to include provision amending, repealing or revoking any provision made by or under an Act or other instrument or documents, whether passed or made in the future or in previous sessions or the current session of Parliament.

Clause 52: Consultation

229 This clause sets out a consultation requirement for the Secretary of State in advance of making regulations under Part 2. Subsection (2) requires that, where the Secretary of State lays a draft of regulations (under this Part) before Parliament, it must be accompanied by a report (by the Secretary of State) about the consultation process that has been undertaken.

230 These requirements do not apply in two circumstances: with regards to regulations renaming Social Work England; and, if regulations amend other regulations and, in the opinion of the Secretary of State, do not make any substantial change.

Clause 53: Parliamentary procedure for regulations under Part 2

231 Regulations made under clause 33 are to be subject to the negative resolution procedure, but any other regulations under Part 2 are to be subject to the affirmative resolution procedure.

Clause 54: Transfer Scheme

232 Subsection (1) of this clause provides power for the Secretary of State to make a scheme to transfer property, rights and liabilities from the Health and Care Professions Council (referred to as the ‘old regulator’) to Social Work England. This is called a ‘transfer scheme’.

233 Subsection (2) provides that the things that may be transferred under a transfer scheme include: (a) property, rights and liabilities that could not be transferred without the transfer scheme (b) property acquired and rights and liabilities arising after the scheme is made.

234 Subsection (3) enables a transfer scheme to make consequential, supplementary,
incidental or transitional provision and allows for the transfer scheme to provide for other things as listed.

235 Subsection (4) allows a transfer scheme under this clause to provide for modification to be made by agreement and for these modifications to have effect from the date the original scheme came into effect.

Clause 55: Repeal of existing powers to regulate social workers

236 This clause makes provision regarding the repeal of existing powers (in section 60 and 60A of the Health Act 1999) to regulate social workers.

Clause 56: Interpretation of Part 2

237 This clause defines the following terms used in Part 2: “approved mental health professional”; “Minister of the Crown”; “professional standards”; “register”; “register of students”; “registered student”; “the regulator”; “social work in England”; and “social worker in England”.

Clause 57: Review by independent person

238 This clause requires the Secretary of State to commission an independent person to review the operation of Part 2 of the Bill during a specified review period and provide a report on the findings of the review to the Secretary of State.

239 Sub-section (2) requires that the independent person, in carrying out the review, consult with representatives of social workers in England and anyone else the person considers appropriate.

240 Sub-sections (3) and (4) require that the Secretary of State to lay the report, and a response to the report, before Parliament.

241 Sub-section (5) specifies that the review period is five years beginning with the day on which clause 33(1) comes fully into force.

Part 3: General

Clause 58: Power to make transitional provision

242 This clause allows the Secretary of State to make transitional etc. provision in connection with the commencement of any provisions of the Bill.

Clause 59: Power to make consequential provision

243 This clause allows the Secretary of State to make regulations which make consequential amendments to other legislation (including primary legislation) which are necessary by virtue of any provision of this Bill. Under subsections (3) and (4), where such regulations amend primary legislation, they will be subject to the affirmative resolution procedure. Any other consequential regulations will be subject to the negative resolution procedure.

Clause 60: Regulations: general

244 This clause provides that where regulations are made under this Bill (apart from commencement regulations), those regulations may make consequential, supplementary, incidental, transitional or saving provision. Subsection (2) also allows regulations to make different provision for different purposes.

Clause 61: Affirmative and negative resolution procedures

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245 This clause stipulates that where regulations under this Bill are subject to the negative resolution procedure, they are subject to annulment in pursuance of a resolution of either House of Parliament, and that where regulations made under this Bill are subject to the affirmative resolution procedure, a draft of the regulations must be laid before Parliament and approved by a resolution of each House of Parliament. Subsection (3) allows any provision which may be made in an instrument which is subject to the negative resolution procedure to be included in an instrument which is subject to the affirmative resolution procedure.

Clause 62: Extent

246 Subsection (1) provides that clauses 59 to 61 extend to England, Wales, and Scotland. Subsection (2) provides that an amendment or repeal made by the Bill will have the same extent as the enactment which is amended or repealed. Apart from those matters, the Bill extends to England and Wales only.

Clause 63: Commencement

247 This clause provides that Part 3 of the Bill will come into force on the day on which it is passed, and that the provisions of Parts 1 and 2 of the Bill will come into force on such day or days as the Secretary of State may specify in regulations. Subsection (3) allows the Secretary of State to commence individual provisions on different days for different purposes.

Clause 64: Short title

248 This clause confirms the short title of the Bill

Schedule 1: Part 1 of this Act: consequential amendments

249 Paragraph 1 amends Schedule 1 to the Local Authority Social Services Act 1970 to include clause 2 (local offer for care leavers) within the definition of ‘social services functions’ which is specified in that Act. Paragraphs 2 to 4 make further consequential amendments arising out of the new local offer requirement.

250 Paragraph 5 adds section 23CZB of the Children Act 1989 which is inserted by clause 3 (advice and support), to the list which is contained in Schedule 3 to Nationality, Immigration and Asylum Act 2002 (kinds of support for which certain people are ineligible).

251 Paragraph 6 extends the apprenticeship offer contained in section 83A of the Apprenticeships, Skills, Children and Learning Act 2009 to persons covered by clause 3 (advice and support).

252 Paragraph 7 amends the Local Authority Social Services Act 1970 to provide that the new local safeguarding and child death review arrangements are included in the definition of ‘social services functions’ which is specified in that Act.

253 Paragraph 8 amends section 83 of the Children Act 1989, which concerns research and returns of information. In section 83(1), which covers powers of the Secretary of State to conduct or assist in conducting research, Local Safeguarding Children Boards are replaced by the Child Safeguarding Practice Review Panel, safeguarding partners and child death review partners. Further superseded references to Local Safeguarding Children Boards are also removed by this paragraph.

254 Paragraph 9 amends section 31 of the Children and Young Persons Act 2008, which concerns the supply of information concerning deaths of children. As a consequence of the new arrangements for child death reviews, it is necessary to
make new provisions for the registrar of births and deaths in England to supply information of the deaths of all deceased under the age of 18 to the child death review partners. ‘Appropriate Boards’ are replaced by ‘appropriate bodies’ and arrangements for the supply of information concerning deaths of children in England are separated from the arrangements for the supply of information concerning deaths of children in Wales. This paragraph also defines child death review partners, and the definition of ‘Local Safeguarding Children Board in England’ is removed.

Schedule 2: Social Work England

255 This schedule includes provisions relating to the governance of the regulator including powers to appoint members and staff, powers for the regulator to delegate functions and requirements as to annual reports and accounts. Specifically the schedule provides for the following:

a) that the regulator is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown and that members and staff of the regulator are not to be regarded as Crown servants;

b) that the regulator is to consist of a Chair appointed by the Secretary of State and other members that the Secretary of State may appoint;

c) the details about terms of office, remuneration and pensions of members;

d) that the regulator must appoint a chief executive who must be approved by the Secretary of State and who is to be an employee of the regulator. The Secretary of State may appoint the first chief executive;

e) that the regulator may appoint other staff on such terms, including in relation to remuneration and pension arrangements, as the regulator may decide (but the regulator must obtain Secretary of State approval for any terms relating to remuneration or pension arrangements);

f) that the regulator may determine its own procedure including quorum and that no proceeding is invalidated by a vacancy in the office of chair or a defect in the appointment of any member;

g) that the regulator may delegate functions to members, members of staff or committees and that it may delegate functions to any other person if it considers that the delegation is likely to lead to an improvement in the exercise of its functions and the person has agreed to the delegation (but the functions that may be so delegated do not include any power or duty to make rules). The responsibility for the exercise of the function will remain with the regulator;

h) that committees or sub-committees of the regulator may include persons who are not members of the regulator;

i) that the regulator must send the Secretary of State a report on the exercise of its functions during the year as soon as possible after the end of each financial year. It must prepare a statement of accounts for each financial year which must be in such form as the Secretary of State may direct and the regulator must send a copy of this statement to the Secretary of State and the Comptroller and Auditor General, within the time period directed by the Secretary of State. The Comptroller and Auditor General must examine, certify and report on the statement of accounts and send a copy of the

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certified statement and of the report to the Secretary of State as soon as possible. The Secretary of State must, in respect of each financial year, lay before Parliament a document consisting of the annual report provided to the Secretary of State by the regulator and the certified statement of accounts and report sent by the Comptroller and Auditor General;

j) that the application of the regulator’s seal must be authenticated by the signature of a member of the regulator or an authorised person. A document purporting to be duly executed under the seal of the regulator is to be received in evidence and is to be treated as so executed unless the contrary is shown;

k) that a reference to Social Work England will be inserted into Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 at the appropriate place, so that all members of the regulator will be disqualified from membership of the House of Commons; and

l) that reference to the regulator will be inserted into Part 6 of Schedule 1 to the Freedom of Information Act 2000, such that the regulator will be a public authority for the purposes of that Act.

Schedule 3: Oversight by the Professional Standards Authority for Health and Social Care

256 Schedule 2 provides for the National Health Service Reform and Health Care Professions Act 2002 (‘the 2002 Act’) to be amended to give the PSA functions in respect of Social Work England, as the PSA has for other health and social care regulators. The amendments to the 2002 Act are as follows:

a) Paragraph 2 adds Social Work England to the list of regulatory bodies under section 25(3) of the 2002 Act. The PSA has general functions listed under section 25(2) of the 2002 Act. By virtue of Social Work England being made a ‘regulatory body’ under section 25(3), these general functions will now apply with regards to Social Work England, as will other functions provided for in Part 2 of the 2002 Act, other than those which are specifically excluded further to amendments made under Schedule 2 of this Act.

b) Paragraph 3 amends section 25A of the 2002 Act, which requires the Privy Council by regulations to require each regulatory body to pay the PSA periodic fees of such amount as the Council determines in respect of such of the PSA’s functions in relation to that body as are specified in the regulations. Paragraph 3 excludes Social Work England from the regulatory bodies to be captured by these regulations. Paragraph 3 also amends the heading of section 25A to specify that section 25A concerns ‘funding of the Authority by bodies other than Social Work England’.

c) Paragraph 4 provides for new section 25AA to be inserted into the 2002 Act after section 25A, requiring the Secretary of State, by regulations, to require Social Work England to pay the PSA periodic fees, of such amount as determined by the Secretary of State, in respect of such of the PSA’s functions in relation to Social Work England as are specified in the regulations. The functions referred to do not include the PSA’s functions under Section 26A of the 2002 Act. Section 25AA requires the regulations to provide for a method of determining the amount of a fee under the regulations and sets out the process the Secretary of State must follow to

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set the fee to be paid by Social Work England to the PSA in regulations. Further details include the following:

a. Subsection (4) requires the Secretary of State, before determining the amount of a fee under the regulations, to request the PSA to make a proposal stating the amount of funding it considers it requires in order to perform for the period to which the fee would apply such of its functions in respect of Social Work England as are specified in the regulations.

b. Subsection (5) requires the PSA to comply with this request but to consult with Social Work England before doing so.

c. Subsection (6) provides that the Secretary of State may then consult Social Work England once in receipt of the PSA’s proposal.

d. Having taken into account any representations from Social Work England, subsection (7) requires the Secretary of State to propose the amount of funding that the Secretary of State considers the PSA requires in order to perform for the period to which the fee would apply such of its functions in relation to Social Work England as are stated in the regulations. The Secretary of State must also determine, in accordance with the method provided for under subsection (3), the fee that Social Work England would be required to pay.

e. Subsection (8) requires the Secretary of State to consult the PSA about the proposal under subsection (7)(a) and the determinations under subsection (7)(b). The Secretary of State must also consult Social Work England about the determination under subsection (7)(b) of the amount it would be required to pay the PSA.

f. Subsection (9) requires the Secretary of State, having taken into account such representations as received following consultation under subsection (8), to determine the amount of funding the PSA requires in order to perform for the period to which the fee would apply such of its functions as are set out in the regulations. The Secretary of State must also determine, in accordance with the method provided for under subsection (3), the amount that Social Work England is required to pay the PSA.

d. Paragraph 5 excludes Social Work England from section 25C of the 2002 Act, which provides, amongst other things, for the PSA to assist the Privy Council in the appointment of members of a regulatory body. As the Privy Council has no role in Social Work England, it is not necessary for this function to apply to Social Work England.

e. Paragraphs 6 to 8 make amendments to sections 25D to 25F of the 2002 Act, which allow regulatory bodies to hold certain voluntary registers and require those bodies establishing such voluntary registers to make impact assessments and consult before doing so. It is not intended that Social Work England should hold voluntary registers. The amendments at paragraphs 6 to 8 serve to exclude Social Work England from these provisions and to make consequential amendments in relation to this.

f. Paragraphs 9 to 11 make amendments to sections 25G to 25I of the 2002 Act, which provide for the PSA to accredit voluntary registers held by regulatory bodies and for the PSA to make an impact assessment and consult before accrediting such registers. As is not intended that Social Work England should hold voluntary registers, this function is not applicable and these paragraphs make the necessary amendments to

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exclude Social Work England from this function.

g. Paragraph 12 amends section 26A of the 2002 Act. Under subsection (1C) of this provision, the Welsh Ministers, the Scottish Ministers or the relevant Northern Ireland department may request the PSA for advice on any matter connected with accreditation of registers under section 25G other than accreditation of registers referred to in subsection (1D). Paragraph 12(2) omits paragraph (b) from subsection (1D), since the reference to voluntary registers for those who are or have been participating in studies for the purpose of becoming a member of the social work profession in England in section 25G is omitted by the amendment made under paragraph 6(3) of this schedule. Paragraph 12(3) makes an amendment to subsection (1E) as a consequence of the amendment to subsection (1D).

h. Paragraph 13 excludes Social Work England from the PSA’s power under section 27(2) of the 2002 Act to direct a regulatory body to make rules. As Social Work England is a non-departmental public body for which the Secretary of State is accountable to Parliament, it would not be appropriate for the PSA to have this power of direction. This does not prevent the PSA from making recommendations to the Secretary of State regarding Social Work England under its other powers.

i. Paragraph 14 amends section 28(1) of the 2002 Act. The Privy Council may make provision, by virtue of section 28(1), in regulations about the investigation by the PSA of complaints made to it about the way in which a regulatory body has exercised any of its functions. Paragraph 14 excludes Social Work England from the regulatory bodies referred to in section 28(1) such that the Privy Council may not make regulations about the investigation by the PSA of complaints made to it about the way in which SWE has exercised its functions.

j. Paragraph 15 adds new subsection 2A to section 29 of the 2002 Act. Under section 29, the PSA has the power to refer a case, where a relevant decision is made, to the relevant court, if it considers that the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public. Sections 29(1) and (2) set out what section 29 applies to and section 29(3) states that the things to which section 29 applies are ‘relevant decisions’. New subsection 2A indicates that section 29 is also to apply to any steps or decisions which are taken by Social Work England (or any of its committees or officers) in connection with fitness to practise or discipline and which are of a description specified in regulations made by the Secretary of State – these will be ‘relevant decisions’. This amendment extends the PSA’s function of referring cases to the relevant court, where the relevant decision is considered not sufficient for public protection, to apply to relevant decisions made by Social Work England, as provided for under new subsection (2A). Paragraph 15 clarifies that the relevant court in relation to a relevant decision as a result of subsection (2A) means the High Court of Justice in England and Wales.

257 Paragraph 16 amends section 38 of the 2002 Act, to exclude regulations made under section 29(2A) from being subject to the negative resolution procedure and provides that they be made subject to the affirmative resolution procedure.
Commencement

258 All the substantive provisions of this Bill come into force through commencement regulations to be made by the Secretary of State.

Financial implications of the Bill

259 The financial implications of the Bill have been assessed and a full discussion can be found in the supporting impact assessment document.

260 There are two key cost implications both of which the Department for Education will keep under review.

261 The first relates to the provision by local authorities of an extended personal adviser service to young people leaving care, and the publication of their offer of support to those same young people. Costs are estimated at up to £8 million per year once the requirement has been fully implemented. The Department for Education has committed to meeting the costs of implementation and steady state provision. Further work will be undertaken to assess the relative costs and merits of different approaches to implementation.

262 The second relates to the clauses on educational attainment for previously looked after children. These costs have been assessed at a maximum of £50,000 per local authority. The Department for Education seeks to offset these costs against savings realised from its investment in the regionalisation of adoption services since 2015.

263 The creation of a new social work regulator will have cost implications that will be determined by subsequent regulations setting out the details of Social Work England’s operations. The clauses include, interalia, provision for the charging of fees in relation to the discharge of a new social work regulator’s functions. As and when subordinate legislation in these areas is made, its financial implications will be considered, but the Government has already committed to meeting the costs of set up.

Parliamentary approval for financial costs or for charges imposed

264 A money resolution will be needed to cover grants paid by the Secretary of State to Social Work England, and other Ministerial expenditure, under Part 2 of the Bill. The money resolution will also cover increases in expenditure under other Acts. For example, the appointment of personal advisers under the new section 23CZB of the Children Act 1989 inserted by clause 3 of the Bill may give rise to an increase in sums paid to local authorities in England under section 78 of the Local Government Finance Act 1988.

265 A ways and means resolution will be needed to cover fees payable to Social Work England. See clause 44 of the Bill.
Compatibility with the European Convention on Human Rights

266 Section 19 of the Human Rights Act 1998 requires a Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with the Convention Rights (as defined by section 1 of that Act). The Minister for Vulnerable Children and Families has made the following statement: "In my view, the provisions of the Children and Social Work Bill are compatible with the Convention rights".

267 Clause 1 may be considered to engage a number of Convention Rights, including Article 8, as additional duties are placed on local authorities when exercising their duties in relation to looked after children and care leavers. However, the clause does not constitute an infringement of those rights as it entitles those children and young people to additional consideration of their particular needs on the part of a local authority. Similarly, clauses 2 and 3 extend the support which a local authority are obliged to give to care leavers.

268 Clauses 8 and 9 engage Articles 6 and 8, as they affect the matters which a court must consider when deciding to make care order or any order relating to adoption. They also affect the matters to be addressed by adoption agencies in England when they are making decisions in connection with adoption. The making of a care order means that the local authority obtains parental responsibility for the child and can determine the extent to which others with parental responsibility, including the child’s parents, can make decisions concerning the child. The making of an adoption order removes the status of former parents or guardians entirely. It may be that specific consideration of the suitability of a long term plan to meet a child’s current and future needs resulting from the harm they have suffered or have been at risk of suffering, will result in a decrease in the number of children remaining within their birth family/family friends at the conclusion of care proceedings. If so, this will inevitably have an effect on the prospects of a child’s former family life being disrupted or curtailed. However, this will only be the case if the court has considered that such a placement would not be in the child’s best interests. A child’s welfare remains the paramount consideration under section 1 of the Children Act 1989 and section 1 of the Adoption and Children Act 2002 and final decisions will remain with independent judges. These provisions are therefore compatible with the State’s duties under Article 8.

269 Although Article 6 is also engaged by clauses 8 and 9, because of the addition to the information which must be before the courts, it is not infringed as there is no change to the rights of natural parents and guardians to oppose the making of care and adoption orders, and to appeal them.

270 With regard to clauses 12 to 15, the purpose of transferring responsibility for serious case reviews is to improve their effectiveness by increasing the learning derived from them. It is considered that these provisions will serve to advance the government’s duties under Articles 2 and 3 of the Convention as it is hoped that learning derived from the new reviews will be utilised to reduce any failures in the welfare system in this area and therefore ultimately reduce cases of abuse or neglect.

271 There is the potential for Article 6 to be engaged in the context of the powers to request information which may be exercised by the National Panel, a new local...
safeguarding partner and a child death review partner in new sections 16D, 16H and 16N of the Children Act 2004. In order to enforce any request for information the relevant safeguarding or child review partner would have to apply to the High Court or the county court for an injunction. In such a situation the court would consider the reasons for such a request and any refusal to comply, which would afford sufficient protections. Relevant guidance will be provided to those requesting information.

272 Part 2 of the Bill establishes a new regulator of social workers in England. Certain functions are conferred on the regulator including: the keeping of a register of social workers; the determination and publication of professional standards for social workers and standards of education and training; and making arrangements for determining the fitness to practice of social workers. Provision is also made for oversight of the regulator by the Professional Standards Authority (‘the PSA’). The PSA will have certain powers set out in [Schedule 2] to refer cases in connection with fitness to practice or discipline to the courts. The regulator will be a public authority within the meaning of the Human Rights Act 19998, as are the PSA and the Secretary of State. As such each of these will need to exercise the functions which are conferred on them in a way which is compatible with the Convention.

273 Part 2 contains a number of specific regulations making powers which may in particular set out the detail regarding the new registration regime (clause 36) and fitness to practice (clause 40). These powers to make regulations do not of themselves engage Convention rights. However, such regulations will need to establish a regime and processes which are compliant with the Convention, in particular Article 6. To the extent that Article 6 is engaged by such regulations it is intended to make these processes Article 6 compliant. Similarly, clause 37 provides the Secretary of State with a power to make regulations which impose restrictions on practice and the use of protected titles or descriptions specified in the regulations; and clause 38 provides the Secretary of State with a power to make regulations to create offences. These powers to make regulations do not of themselves engage Convention rights, but when exercised will need to establish a regime which is Convention compliant, for example, with respect to Article 1 of the First protocol.

**Related documents**

274 The following documents are relevant to the Bill and can be read at the stated locations:

- Putting children first: our vision for children’s social care
  

- Children’s social care reform: a vision for change
  

- Keep on caring: supporting young people from care to independence

535899/Care-Leaver-Strategy.pdf

- Adoption: a vision for change
  https://www.gov.uk/government/publications/adoPTION-a-vision-for-change

- Children’s social care innovation programme
**Annex A - Territorial extent and application in the United Kingdom**

One substantive clause and three of the technical clauses in part 3 extend to England, Wales and Scotland. The remainder of the Bill’s provisions extend to England and Wales with provision (clause 62 (2) that amendment or repeal made by this Bill will have the same extent as the enactment which is amended or repealed. The Bill primarily applies only to England with clauses 8 and 9 applying also to Wales, and clause 31 applying to England Wales and Scotland. In the UK Government’s view, clause 9 falls in part within the legislative competence of the National Assembly of Wales and a legislative consent motion is being sought. In the UK Government’s view the remaining matters to which these three clauses relate are not within the legislative competence of the National Assembly of Wales or the Scottish Parliament and no further legislative consent motions are necessary.¹

<table>
<thead>
<tr>
<th>Provision</th>
<th>Extends to E &amp; W and applies to England?</th>
<th>Extends to E &amp; W and applies to Wales?</th>
<th>Extends and applies to Scotland?</th>
<th>Extends and applies to Northern Ireland?</th>
<th>Would corresponding provision be within the competence of the National Assembly for Wales?</th>
<th>Would corresponding provision be within the competence of the Scottish Parliament?</th>
<th>Would corresponding provision be within the competence of the Northern Ireland Assembly?</th>
<th>Legislative Consent Motion needed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 1 CHILDREN Clauses 1 - 7 and 10</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Part 1 CHILDREN Clause 8</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Part 1 CHILDREN Clause 9</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes (see paragraph 35 on need for an LCM)</td>
</tr>
<tr>
<td>Part 1 OTHER PROVISIONS Clauses 11 – 30 and 32</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Part 1 OTHER PROVISIONS Clause 31</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
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</tbody>
</table>

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

*These Explanatory Notes relate to the Children and Social Work Bill [HL] as brought from the House of Lords on 24 November 2016 (Bill 99)*
### Minor or consequential effects

None identified

### Subject matter and legislative competence of devolved legislatures

In relation to Wales, social welfare, including social services, child protection, adoption and fostering and the care and well-being of children, is a devolved matter under paragraph 15 of Schedule 7 to the Government of Wales Act 2006 (“paragraph 15”). In relation to Scotland, social welfare is not reserved to the UK government by Schedule 5 of the Scotland Act 1998 and is therefore devolved to the Scottish Parliament. In relation to Northern Ireland, social welfare is not an excepted or reserved matter falling within Schedules 2 or 3 to the Northern Ireland Act 1998, and it is therefore transferred to the Northern Ireland Assembly.

Part 1, clauses 8 and 9 of the Bill relate to the considerations of the court in making adoption decisions. Paragraph 15 expressly excepts family law and proceedings from the devolution of social welfare, and these clauses therefore extend and apply to England and Wales. Part 1, clause 9 also relates to adoption decisions made by adoption agencies. Adoption expressly falls within ‘social welfare’ as defined in paragraph 15 and therefore a legislative consent motion is being pursued in respect of this aspect of the clause.

Clause 31 relating to pre-employment protection of whistle-blowers in children’s social care, extends

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2 References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

*These Explanatory Notes relate to the Children and Social Work Bill [HL] as brought from the House of Lords on 24 November 2016 (Bill 99)*

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<th>Legislative Consent Motion needed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 2 SOCIAL WORKERS ETC Clauses 33 - 57</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Part 3 GENERAL Clause 58</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Part 3 GENERAL Clauses 59 – 64</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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</tr>
</tbody>
</table>
to England and Wales and Scotland. As this relates to employment law it is a reserved matter in Scotland, and not transferred to Wales

The remainder of Part 1 makes provision for the welfare of children in England, including the operation of local and national safeguarding review arrangements, provision to support the educational achievement of children entering long term placements, provision to support children leaving care, provision to clarify the Secretary of State’s powers to intervene where local authority children’s services are failing, and provision to test deregulatory approaches to the discharge of children’s social care. These all fall within paragraph 15. Part 2 of the Bill makes provision in relation to the regulation of social workers in England and with respect to the approval of courses for approved mental health professionals, and the specification of training in relation to best interest assessors. Separate provisions are already in place for the regulation of social workers in Wales, Scotland and Northern Ireland.
CHILDREN AND SOCIAL WORK BILL [HL]

EXPLANATORY NOTES

These Explanatory Notes relate to the Children and Social Work Bill [HL] as brought from the House of Lords on 24 November 2016 (Bill 99).

Ordered by the House of Commons to be printed, 24 November 2016

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