

CHILDREN AND SOCIAL WORK BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Children and Social Work Bill [HL] as introduced in the House of Lords on 19 May 2016 (HL Bill 1).

- 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 purposes:
 - Improving decision making, and support for looked after and previously looked after children in England and Wales.
 - Enabling better learning about effective approaches to child protection and the wider provision of children's social care in England.
 - Enabling the establishment of a new regulatory regime specifically for the social work profession in England.

Policy background

Looked after children

- 2 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 removes the requirement for certain care leavers to be in education and training before they are entitled to a personal adviser and other help accessing local authority services.
- 3 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 in England

- 4 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.
- 5 Currently, where serious incidents of child harm occur reviews are conducted at a local level. The Bill makes provision for the establishment of a central Child Safeguarding Practice Review Panel. Where cases raise issues of national importance the Panel would conduct these reviews and disseminate lessons to the sector at large.
- 6 Currently much of the detail of both what local authorities in England are required to do to support and protect vulnerable children and young people and how that should be achieved is prescribed by legislation. Where local authorities in England believe alternative approaches to those prescribed in legislation could support those children more effectively or efficiently, the Bill makes provision for them to request from Government exemptions or modifications from such requirements as they propose for a time-limited testing period. This is part of a wider

programme to stimulate [innovation in children's social care](#).

Social workers

- 7 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.
- 8 The Bill responds to reviews of social work education by Sir Martin Narey and Professor David Croisdale-Appleby by making provision to enable the establishment of 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. It also allows 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

- 9 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".
- 10 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 and adoption proceedings in England and Wales

- 11 Section 31 of the 1989 Act enables a court, on the application of a local authority (or authorised

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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.

- 12 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.
- 13 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.

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 leavers in England

- 16 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. This Bill removes the existing requirement on local authorities to publish information under Schedule 2 of the 1989 Act about the services provided to looked after children and care leavers, and replaces it with a specific duty to consult on and publish a 'local offer to care leavers'.
- 17 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 informed the responsible local authority that he wishes to pursue a programme of education and training. The Bill extends this duty to a former relevant child,

regardless of whether they are pursuing a course of education and training.

Other provisions relating to children in England

Combined authority functions relating to children

- 18 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 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 Protection Cases – the Child Safeguarding Practice Review Panel

- 19 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.

Children's social care: different ways of working

- 20 "Social services functions" are defined in section 1A of and Schedule 1 to the Local Authority Social Services Act 1970. The legislation which confers those functions, together with certain provisions of other Acts specified in, for example, section 50 of the Children Act 2004 are, so far as they relate to children and young people, known as "children's social care legislation". That term is not yet defined in legislation, but is in clause 19 of this Bill. Children's social care legislation includes all the enactments which govern how local authorities safeguard and promote the welfare of children and those leaving care, for example the Children Act 1989 ("the 1989 Act") the Adoption and Children Act 2002 and the Children Act 2004.
- 21 There is a power for the Secretary of State to exempt a local authority from the requirements of education legislation by regulations in Part 1 of the Education Act 2002, but there is no equivalent power yet in respect of children's social care legislation.

Social workers

Social Worker regulations

- 22 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

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was amended by the HSCA 2012 to remove references to the GSCC and to reflect the transfer of regulation to the HCPC.

- 23 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.
- 24 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').
- 25 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.
- 26 Relevant EU legislation is the Recognition of Professional Qualifications Directive 2005/36/EC ("the MRPQ Directive"), as amended by Directive 2013/55. The MRPQ 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

- 27 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

- 28 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-
 - 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);

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- 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.

29 We are concerned here with the last assessment, the best interests assessment. The MCA 2005 and Regulations made under it provide for the selection of a Best Interests assessor.

Territorial extent and application

- 30 The Bill's provisions extend to England and Wales with provision that amendment or repeal made under this Bill will have the same extent as the enactment which is amended or repealed (see clause 45(1)). However, the provisions of the Bill are primarily applicable to England only.
- 31 Clauses 8 and 9 of the Bill (Care and adoption proceedings in England and Wales) apply to England and Wales.
- 32 Both clauses apply to family law and proceedings which are reserved matters and not within the legislative competence of the National Assembly for Wales. As such no legislative consent motion is necessary.
- 33 Clause 9 also applies to adoption agencies which fall within the legislative competence of the National Assembly for Wales. This part of the clause is therefore drafted to apply to England only.
- 34 Save for clauses 8 and 9, 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. No legislative consent motion is being sought in relation to any provision of the Bill. 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.
- 35 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

- 36 This clause introduces seven principles to which local authorities in England must have regard whenever they exercise a function in relation to looked after children, relevant children and former relevant children (together known as “relevant children and young people”) as defined by sections 22(1), 23A(2) and 23C(2) 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 looking after the child.
- 37 The first principle requires a local authority to have regard to the need to act in the best interests of, and to promote the health and well-being of relevant children and young people.
- 38 The second principle requires a local authority to have regard to the need to encourage relevant children and young people to express their views, wishes and feelings.
- 39 The third principle requires local authorities to have regard to the need to take account of a relevant child or young person’s views, wishes and feelings.
- 40 The fourth principle requires a local authority to have regard to the need to help relevant children and young persons 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.
- 41 The fifth principle requires the local authority to have regard to the need to promote high aspirations amongst relevant children and young people, and to have regard to the need to secure the best outcomes.
- 42 The sixth principle requires the local authority to have regard to the need for relevant children and young people to be safe and for stability in their home lives, relationships and education or work.
- 43 The final principle requires a local authority to have regard to the need to prepare relevant children and young people for adulthood and independent living.
- 44 Subsection (3) defines the terms ‘local authority’ and ‘relevant partner’.
- 45 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

- 46 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 Act 1989 and other services it offers to everyone, which may assist care leavers in or in preparing for adulthood and independent living.
- 47 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; and participation in society.

- 48 Subsection (3) confirms that the local offer for care leavers encompasses services offered by others which the local authority would have had the authority to offer itself.
- 49 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.
- 50 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.
- 51 Subsection (8) removes the existing requirement for a local authority to publish information about services provided to care leavers under specified sections of the Children Act 1989, as that duty is now replaced by this clause.
- 52 Subsection (9) distinguishes the local offer for care leavers from the local offer published under section 30 of the Children and Families Act (CFA) 2014 by renaming the latter the "SEN and disability local offer".

Clause 3: Advice and support on request

- 53 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) 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.
- 54 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.
- 55 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".
- 56 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.
- 57 Subsection (7) of 23CZB provides that a local authority must take steps to make a former relevant child aware of their right to make a request under subsection (2) of 23CZB and what the effect of that request will be.
- 58 Subsection (8) of 23CZB defines the term "former relevant child".

- 59 Subsection (3) of clause 3 clarifies the intention behind section 23CA of the Children Act 1989, which is that where local authority is under a duty to appoint a personal adviser is before a young person reaches the age of 25, that duty subsists until the young person ceases to pursue the relevant clause of education or training.
- 60 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 to subsist. 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.
- 61 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

- 62 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 parents, 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.
- 63 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.
- 64 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).
- 65 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

- 66 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 (4), 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.
- 67 Subsection (2) gives the Secretary of State the power to make regulations to prescribe the necessary qualifications or experience of the designated member of staff. Subsection (3) also requires the governing body to have regard to any guidance issued by the Secretary of State.

Clause 6: Academies: staff member for looked after and previously looked after pupils

- 68 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.

69 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.

70 '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

71 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 only required the governing body to have regard to such guidance.

Clause 8: Care orders: permanence provisions

72 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.

73 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.

Clause 9: Adoption: duty to have regard to relationship with adopters

74 This clause amends the Adoption and Children Act 2002 and requires courts and adoption agencies (in England) 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.

Chapter 2: Other provision relating to children in England

Clause 10: Power to secure proper performance

75 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.

76 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 11: Child Safeguarding Practice Review Panel

- 77 This clause adds a new section 16A into the Children Act 2004. References to subsections below are to subsections in that new section.
- 78 Subsection (1) imposes a duty on the Secretary of State to establish a Child Safeguarding Practice Review Panel.
- 79 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).
- 80 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.
- 81 The Secretary of State under subsection (6) may make arrangements regarding the establishment of the Panel, including its proceedings and annual or other reports. Subsection (7) enables the Secretary of State to provide staff, facilities or other assistance to the Panel.
- 82 Subsection (8) gives the Secretary of State the discretion to pay the chair and members of the Panel or to pay expenses.

Clause 12: Functions of the Panel

- 83 This clause adds a new section 16B into the Children Act 2004. References to sub clauses below are to sub clauses in that new section.
- 84 Subsection (1) sets out the functions of the new panel. These are:
- to identify serious child protection cases in England which raise issues that are complex or of national importance, and
 - where it considers appropriate, to arrange for such cases to be reviewed under their supervision in accordance with the arrangements made by the Secretary of State.
- 85 Subsection (2) explains that the purpose of these reviews is to ascertain what lessons (if any) can be learned about the way in which Local Authorities or others should work to safeguard children.
- 86 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.
- 87 Subsection (4) specifies that the Panel must publish the report, unless they consider it inappropriate to do so.
- 88 Subsection (5) states that if the Panel consider it inappropriate to publish the report, they must

publish any information relating to the lessons to be learned from the case that they consider it appropriate to publish.

- a) 13 Subsection (6) allows the Secretary of State to set out arrangements about various issues relating to the functions of the Panel. These may include:
- 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.

89 Subsection (7) specifies that the Panel must have regard to any guidance given by the Secretary of State in connection with its functions. Guidance given by the Secretary of State may include 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. This is set out in subsection (8).

90 Subsection (9) states a 'reviewer' can be one or more persons who are appointed to review a case on behalf of the Panel. This section also defines what is meant by 'serious child safeguarding cases' and the term 'serious harm'.

Clause 13: Events to be notified to the Panel

- 91 This clause adds a new section 16C into the Children Act 2004. References to subsections below are to subsections in that new section.
- 92 Subsection (1) requires Local Authorities to notify the Child Safeguarding Practice Review Panel of certain events relating to children which occur in their area. These events relate to the death of or serious harm to a child who is known or suspected to have been abused or neglected, the death of a child who was looked after by the Local Authority (within the meaning given by section 22(1) of the Children Act 1989) and the death of a child in a regulated setting.
- 93 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.
- 94 Subsection (3) defines what is meant by 'regulated setting' and 'serious harm' for the purposes of this section.

Clause 14: Information

- 95 This clause adds a new section 16D into the Children Act 2004. References to subsections below are to subsections in that new section.
- 96 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.

- 97 Subsection (2) states that a person or body requested to provide information under this section must comply with the request.
- 98 Subsection (3) 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.
- 99 Subsection (4) specifies the meaning of the term 'reviewer' in this section.

Clause 15: Power to test different ways of working

- 100 Subsection (1) describes the purpose of this clause, which is to enable a local authority in England to test different ways of working with a view to achieve better outcomes under children's social care legislation, or the same outcomes more efficiently.
- 101 Under subsections (2)(a) and (2b), the testing of different ways of working is to be achieved through the Secretary of State having the power to make regulations which exempt a local authority from a requirement imposed by children's social care legislation, or which modify such a requirement. Subsection (3) provides that the Secretary of State may only make regulations upon an application or request from a local authority.
- 102 Subsection (4) allows the Secretary of State to make regulations which apply to more than one local authority in England.
- 103 Regulations made under subsection (2) may include consequential changes to children's social care legislation, so that legislative provisions which are not directly the subject of an exemption or modification may be amended to give effect to the regulations.
- 104 Subsection (6) provides that regulations made under this clause are subject to the negative resolution procedure if they only relate to requirements imposed by secondary legislation, or if they only revoke existing regulations made under this clause. Subsection (7) stipulates that all other regulations made by this clause are subject to the affirmative resolution procedure.
- 105 Subsection (8) provides that subsection (3) – the requirement for a request from a local authority before regulations are made - does not apply if regulations only revoke earlier regulations made under this clause.
- 106 Subsection (9) provides that where regulations made under this clause are subject to the affirmative procedure, and would be treated for the purpose of the standing orders of either House of Parliament as a hybrid instrument (statutory instruments which affect certain groups more than others), the regulations are to proceed in that House as if they were not a hybrid instrument.

Clause 16: Duration

- 107 This clause limits the duration of any exemption or modification granted under regulations made under clause 15 to 3 years with the possibility of one further 3 year extension period only (subsections 1, 2, 3 and 4). Any extension to the duration of the regulations must be effected by further regulations, and must be preceded by the laying of a report to Parliament on the effectiveness of the regulations to date (subsection 5).

Clause 17: Consultation

- 108 This clause sets out the consultation requirements for the local authority making a request for an exemption or modification and for the Secretary of State in advance of making regulations.

- 109 Subsection (1) requires that, before a request is made to the Secretary of State, the local authority must consult such of its Local Safeguarding Children Board partners (as defined in section 13 of the Children Act 2004) as it considers appropriate.
- 110 Subsection (2) requires that before any regulations are made under clause 15 the Secretary of State must consult the Children's Commissioner, Her Majesty's Chief Inspector of Education, Children's Services and Skills, and any other person that the Secretary of State considers appropriate.
- 111 Subsection (3) provides that no consultation is required by either a local authority or the Secretary of State if regulations made under clause 15 only revoke earlier regulations made under that clause.
- 112 Subsection (4) enables the Secretary of State, by regulations, to add to the list of persons who must be consulted by either a local authority or the Secretary of State.
- 113 Subsection (5) makes clear that regulations which revoke earlier regulations made under clause 15 are subject to the negative resolution procedure.

Clause 18: Interaction with law about Secretary of State intervening

- 114 This clause enables a person ("the specified person") who is exercising children's social services functions on behalf of or instead of an local authority, pursuant to a direction issued under section 497A of the Education Act 1996, to request that the Secretary of State makes regulations under clause 15 (subsections (1) to (4)). In such a case, the specified person must carry out the consultation which would otherwise have been the responsibility of the local authority. Where the Secretary of State is exercising children's social services functions instead of a local authority pursuant to such a direction then the Secretary of State may make regulations without having received a request to do so, but the Secretary of State must carry out the consultation which would otherwise have been the responsibility of the local authority.

Clause 19: Interpretation of sections 15-18

- 115 This clause defines the terms "children's social care legislation", "local authority in England", "Local Safeguarding Children Board partner" and "subordinate legislation".

Part 2: Social workers etc in England

Chapter 1: Social worker regulations

Clause 20: Social worker regulations

- 116 Subsection (1) of this clause grants the Secretary of State (SoS) power to make regulations for the purpose of regulating social workers in England ('social worker regulations'). These regulations may address any of the areas which are authorised in Chapter 1 of Part 2 of the Bill.
- 117 Subsection (2) provides that social worker regulations must be made in accordance with the affirmative resolution procedure, which requires the formal approval of both Houses of Parliament before it becomes law.

Clause 21: The regulator

- 118 Subsection (1) of this clause provides that social worker regulations may appoint a regulator of social workers. This regulator may be a Secretary of State, or another person.
- 119 Subsection (2) provides that the regulations may establish a new body to be the regulator.

Clause 22: Registration

120 Subsections (1) and (2) of this clause provide that social worker regulations may require the regulator to keep a register of social workers in England, a register of those who are undertaking education or training in England to become social workers (commonly referred to as ‘student social workers’) or a single register which combines the two.

121 Subsections (2) and (3) provide that the regulations may make provision as to how a register will be established and managed, and the information included in it. Subsection (3) provides a list of the matters that may be covered in connection with the register. These include, but are not restricted to: who can be registered and stay registered; different categories of registration; how applications to be registered will be managed; when entry on the register may expire and how it may be renewed; the information to be included in the register; obligations to provide information to the regulator; when a registrant may be suspended or removed from the register; when a registrant may be restored to the register; appeals against decisions made by the regulator in relation to the register; publication of the register and access to it; and the procedure for considering, investigating or deciding who may be or may remain registered (this includes specifying the standard of proof that will be needed).

Clause 23: Restrictions on practice and protected titles

122 This clause allows social worker regulations to impose prohibitions or restrictions in connection with the carrying out of social work in England; the use of protected titles or descriptions; or someone representing themselves as being qualified to carry out social work in England.

123 The provisions would enable the carrying out of social work functions to be restricted to qualified social workers, and to ensure only qualified individuals can use specified titles such as ‘social worker’ or hold themselves out as qualified to carry out social work in England.

Clause 24: Professional standards

124 This clause sets out that social worker regulations may require the regulator of social workers or the Secretary of State to set and publish professional standards for those who are social workers. Subsection (4) sets out that professional standards includes standards relating to the proficiency, performance, conduct and ethics and continuing professional development of social workers.

125 The clause also sets out that social worker regulations may require the regulator of social workers or the Secretary of State to set and publish standards of conduct or ethics for registered student social workers. Regulations could not set out wider professional standards for students relating to proficiency, performance or continuing professional training and development.

126 Subsection (2) provides that regulations may set out arrangements for assessing whether a person meets proficiency standards.

Clause 25: Education and training

127 Subsections (1) and (2) of this clause provide that social work regulations may make provision for the regulator of social workers or the Secretary of State to accredit courses of education and training for those who are already, or wish to become social workers.

128 The intention is that this would allow the regulator to accredit courses which lead to qualification as a social worker and courses undertaken by those who are already social workers, such as in a post qualification specialist area.

129 Subsections (3) and (4) set out that the regulations may make provision about the scheme of accreditation. This can include information about: the criteria for accreditation; the procedure

to be followed to be accredited or have accreditation renewed; duties to provide information to the regulator; and the publication of any accreditation scheme.

Clause 26: Discipline and fitness to practise

130 Subsection (1) of this clause sets out that social worker regulations may include requirements about discipline and fitness to practise requirements for social workers.

131 Subsection (2) lists example areas that such regulations may cover. These include: the person who may make a decision about fitness to practise; appointment of advisers; when disciplinary action may be taken or the circumstances where someone's fitness to practice would be considered impaired; the procedures for considering, investigating and deciding whether a disciplinary breach has occurred or someone is not fit to practice, this can include setting out the standard of proof to be used in making decisions; powers to obtain information when considering, investigating and deciding disciplinary matters and fitness to practice; obtaining information; any temporary measures that might be taken against someone while waiting for the outcome of an investigation; sanctions; and appeals against decisions.

132 Provision that may be made about discipline in respect of registered students (sub-section (3)). It is not intended that provision be made about a registered student's fitness to practise as they would not yet be a social worker.

Clause 27: Advisers

133 This clause enables social worker regulations to permit or require the appointment of advisory panels or individuals to advise the regulator on matters relating to its functions. It also enables social worker regulations to make related provision, for example covering the functions of these advisers and payment, staff and facilities.

Clause 28: Default powers

134 The provisions in this clause only apply in the event that the regulator of social workers is not the Secretary of State. Their purpose is to enable the Secretary of State to take action 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) provides that in these circumstances the regulations may give a power to a specified person to give the regulator a direction to remedy matters.

135 Subsections (3) and (4) provide more information about what may be set out in regulations. They specify that they may make further provision about directions and how they will be enforced and set out examples of matters the regulations might address. These include: the procedure for deciding if the regulator has defaulted or is likely to; the procedure for giving a remedial direction; the steps that the person issuing the direction may take if the regulator does not comply with the direction. This may include allowing the specified person to do anything that the regulator can do. The subsection also states that regulations may make provision about the payment of expenses by the regulator that the specified person has incurred.

Clause 29: Publication and sharing of information

136 This clause enables social worker regulations to require or permit the regulator to publish information or to disclose information. Social worker regulations might allow the regulator, for example, to share information where necessary with other regulators or to publish information about the carrying out of its regulatory activities.

Clause 30: Duty to cooperate

137 This clause would allow social worker regulations to impose duties on the regulator which

would require the regulator to co-operate with other persons or organisations in connection with the regulator's functions.

Clause 31: Transfer schemes

138 Subsection (1) of this clause sets out that if the regulator for social workers is changed through regulations then the regulations may allow the Secretary of State to make a scheme to transfer property, rights and liabilities from the old regulator to the new regulator or to another person. This is called a 'transfer scheme'.

139 Subsection (2) specifies that the first time that regulations appoint a regulator then the old regulator means the Health and Social Care Professions Council and that if subsequently a further scheme is needed then the reference to the 'old regulator' means the regulator appointed by the social worker regulations.

140 Subsection (3) provides that the transfer scheme may include provision about (a) the transfer of property, rights and liabilities that could not be transferred without the transfer scheme provisions and (b) provision about the transfer of property which is acquired and rights and liabilities which materialise after the scheme is made.

141 Subsection (4) and (5) enable consequential, supplementary, incidental or transitional provision. As part of such provision the scheme may: create rights or impose liabilities in relation to the property or rights which are transferred; specify the continuing effect of things done by the old regulator which relate to anything being transferred; make provision for the continuation of things which were in the process of being done by the old regulator and which relate to anything being transferred; specify that references to the old regulator in instruments or documents which relate to things being transferred should be treated as references to the transferee; make provision for the shared use or ownership of property; and if the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') do not apply make provision which is the same or similar.

142 Subsection (6) explains that where rights and liabilities are mentioned they may be in relation to a contract of employment and that when property is transferred it may include the grant of a lease.

Clause 32: Fees

143 This clause sets out when and how the regulator may charge fees. In particular, it specifies that social worker regulations may allow the regulator to charge fees in connection with: registration or continued registration in a register mentioned in clause 22; assessing whether someone meets a professional standard of proficiency as mentioned in clause 24(2); and accreditation or continued accreditation of a scheme accrediting education and training as mentioned in clause 25.

Clause 33: Grants

144 This clause permits the Secretary of State to fund the regulator through making grant payments to it. This power will operate only where the Secretary of State is not the regulator.

Clause 34: Offences

145 This clause sets out that social worker regulations may create offences. These are to be triable on a summary basis only and the offences cannot be punishable with imprisonment.

146 The offences that can be created must be created in relation to: registration in a register mentioned in clause 22; restrictions on practise and titles as specified in clause 23; failing to comply with a requirement to provide documents or other information or give evidence as set out in regulations; or providing false or misleading information or evidence in response to a

requirement set out in social worker regulations.

Clause 35: Conferral of functions and sub-delegation etc

147 Social worker regulations may be used to confer functions, including discretions on the regulator or a Minister of the Crown; the regulations may also enable the delegation of functions.

148 Powers to make, confirm or approve subordinate legislation may be conferred by the social work regulations.

149 Subsection (4) allows for provision which may be made in social worker regulations by virtue of clause 43 (power to make consequential etc provision) 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 36: Consultation about social worker regulations

150 Before making social work regulations the Secretary of State must carry out a public consultation. Subsection (2) provides that when draft social worker regulations are laid before Parliament they must be accompanied by a report by the Secretary of State about the consultation.

Clause 37: Repeal of existing powers to regulate social workers

151 This clause makes provision regarding the repeal of existing powers to regulate social workers.

Clause 38: Interpretation of Chapter

152 This clause is technical in nature and sets out the definitions of terms used within the preceding clauses.

Chapter 2: Approval of courses in relation to mental health social work

Clause 39: Approval of courses for approved mental health professionals in England

153 This clause would allow the Secretary of State to amend section 114ZA of the Mental Health Act 1983, through regulations. This section of the 1983 Act deals with the approval of courses for approved mental health professionals in England, and makes a requirement of the approving body to list approved courses, and those courses no longer approved. Section 114ZA can be amended to transfer functions of the Health and Care Professions Council set out in that section to the new regulator of social workers and to give the regulator of social workers power to charge fees for approving the courses. The clause also sets out matters which may be addressed in the regulations.

154 Regulations made under this section must be made using the affirmative resolution procedure.

Clause 40: Approval of courses for best interest assessors in England

155 This clause amends Paragraph 130 of Schedule A1 to the Mental Capacity Act 2005 in relation to England to allow regulations in relation to a person's training in connection with best interests assessments to include provision for particular training to be specified by the regulator of social workers or the Secretary of State otherwise than in the regulations. The regulations may give the regulator power to charge a fee for specifying training.

Part 3: General

Clause 41: Power to make transitional provision

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

Clause 42: Power to make consequential provision

157 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 43: Regulations: general

158 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, in respect of secondary legislation. Subsection (2) also allows regulations to make different provision for different purposes.

Clause 44: Affirmative and negative resolution procedures

159 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 (2) 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 45: Extent

160 Subsection (1) provides that an amendment or repeal made under this Bill will have the same extent as the enactment which is amended or repealed. Apart from amendments or repeals covered by subsection (1), the Bill extends to England and Wales only.

Clause 46: Commencement

161 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 shall specify in regulations. Subsection (3) allows the Secretary of State to commence individual provisions of the Bill on different days for different purposes.

Clause 47: Short title

162 This clause confirms the short title of the Bill.

Commencement

163 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

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

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

166 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.

167 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.

168 The social work clauses do not in themselves have any cost implications but include, inter alia, 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.

Parliamentary approval for financial costs or for charges imposed

169 This section will be completed when the Bill transfers to the Commons.

Compatibility with the European Convention on Human Rights

170 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 Parliamentary Under Secretary of State for Schools, Lord Nash, has made the following statement: "In my view, the provisions of the Children and Social Work Bill are compatible with the Convention rights".

171 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.

172 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.

173 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.

174 With regard to clauses 11 to 14, 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.

175 Clause 15 to 19 enable the requirements of children's social care legislation imposed on local authorities to be dispensed with or modified. Some legislative requirements, such as those in Parts 3 and 5 of the Children Act 1989 are in place to ensure that local authorities are aware and take action when children are at risk of significant harm or even death, for example at the hands of their parents or carers. In these circumstances Articles 2 and 3 may be engaged. Other legislative requirements, such as those in the Adoption and Children Act 2002, are in place so as to ensure that children are able to stay with their natural families, or establish new families, in which case Article 8 may be engaged. Clause 15(1), however, stipulates that a local authority, when testing any new ways of working, must have a view to achieving better outcomes under children's social services legislation, or better outcomes more efficiently. Added to this, the Secretary of State when making regulations, will be under the duty set out in section 7 of the Children and Young Persons Act 2008, to promote the well-being of children in England, and if this Bill receives Royal Assent, local authorities will also be subject to the corporate parenting principles in clause 1. Accordingly, it is not considered that any regulations can or would be made which adversely affect a child's ECHR rights.

176 Clauses 22 and 26 engage Article 6 – the right to a fair trial in the determination of civil rights and obligations, as they allow regulations to determine eligibility for registration and fitness to practice as a social worker in England, including provision for sanctions and appeals.. To the extent that Article 6 is engaged it is intended to make these processes Article 6 compliant.

Related documents

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

These Explanatory Notes relate to the Children and Social Work Bill [HL] as introduced in the House of Lords on 19 May 2016 (HL Bill 1)

- Children’s social care reform: a vision for change
<https://www.gov.uk/government/publications/childrens-social-care-reform-a-vision-for-change>
- Adoption: a vision for change
<https://www.gov.uk/government/publications/adoption-a-vision-for-change>
- Children’s social care innovation programme
<https://www.gov.uk/government/publications/childrens-social-care-innovation-programme>
- Secretary of State’s 14 January 2016 speech
<https://www.gov.uk/government/speeches/nicky-morgan-delivering-a-revolution-in-childrens-social-care>
- Prime Minister’s 14 December 2015 statement
<https://www.gov.uk/government/news/pm-we-will-not-stand-by-failing-childrens-services-will-be-taken-over>

Annex A - Territorial extent and application in the United Kingdom

The Bill's provisions extend to England and Wales with provision that amendment or repeal made under this Bill will have the same extent as the enactment which is amended or repealed. The Bill primarily applies only to England with clause 24 applying also to Wales and clause 23 applying in part to Wales. In the UK Government's view, the matters to which these two clauses relate are not within the legislative competence of the National Assembly of Wales and no legislative consent motions are necessary.¹

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 1 CHILDREN Clause 1 -7	Yes	No	No	No	Yes	Yes	Yes	No
Part 1 CHILDREN Clause 8	Yes	Yes	No	No	No	N/A	N/A	No
Part 1 CHILDREN Clause 9	Yes	In Part	No	No	In Part	N/A	N/A	No
Part 1 Children Clauses 10 to 19	Yes	No	No	No	Yes	Yes	Yes	No
Part 2 REGULATION OF SOCIAL WORKERS Clauses 20 to 40	Yes	No	No	No	Yes	Yes	Yes	No

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.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 3 GENERAL Clauses 41 - 47	Yes	No, except as provided by clause 45(1)	No, except as provided by clause 45(1)	No, except as provided by clause 45(1)	N/At	N/A	N/A	No

Minor or consequential effects²

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 the clause is currently drafted to apply to England only. 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, and 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

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.

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 introduced in the House of Lords on 19 May 2016 (HL Bill 1).

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