

CHILDREN AND SOCIAL WORK BILL [HL]

EXPLANATORY NOTES ON COMMONS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Commons Amendments to the Children and Social Work Bill as brought from the House of Commons on 8 March 2017.
- 2 These Explanatory Notes have been prepared by the Department for Education in order to assist the reader of the Bill and the Commons amendments, and to help inform debate on the Commons amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Commons amendments themselves, refer to Bill 99, the Bill as first printed for the Commons.
- 4 These Explanatory Notes need to be read in conjunction with the Commons amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Commons amendments.
- 5 All the Commons Amendments were tabled in the name of the Minister or Secretary of State.

Commentary on Commons amendments

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

Commons Amendments 1 and 2

- 6 Amendment 1 would extend the duty on a local authority to provide information and advice (to any person who has parental responsibility, the designated member of staff at the child's school and anyone else the local authority considers appropriate) for the purposes of promoting the educational achievement of children who were adopted from state care outside England and Wales.
- 7 Amendment 2 would define a child as being in state care if he or she is in the care of, or accommodated by, a public authority, a religious organisation or any other organisation whose sole or main purpose is to benefit society.

Commons Amendments to Clause 5: Maintained schools: staff member for previously looked after pupils

Commons Amendments 3, 4 and 5

- 8 Amendment 3 would extend the duty on the governing body of a maintained school to appoint a member of staff to promote the educational achievement of children to children adopted from state care outside England and Wales. Amendment 5 would define a child as being in state care if he or she is in the care of, or accommodated by, a public authority, a religious organisation or any other organisation whose sole or main purpose is to benefit society.

- 9 Amendment 4 would reflect the fact that the legislative provisions about looked after children in Wales are now part of the Social Services and Well-being (Wales) Act 2014 rather than the Children Act 1989.

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

Commons Amendments 6, 7 and 8

- 10 Amendment 6 would extend the duty of an Academy proprietor to appoint a member of staff to promote the educational achievement of children to children adopted from state care outside England and Wales. Amendment 8 would define a child as being in state care if he or she is in the care of, or accommodated by, a public authority, a religious organisation or any other organisation whose sole or main purpose is to benefit society.
- 11 Amendment 7 would reflect the fact that provision about looked after children in Wales is now part of the Social Services and Well-being (Wales) Act 2014 rather than the Children Act 1989.

Commons Amendments after Clause 9, amendments to Clauses 62, 63 and 64, New Schedule before Schedule 1: Placing children in secure accommodation elsewhere in Great Britain etc

Commons Amendment 9

- 12 This new clause would introduce a new schedule which would amend legislation to allow local authorities in England and Wales to place children in secure accommodation in Scotland, and clarify the existing provision for placement by local authorities in Scotland of children in secure accommodation in England and Wales.

Commons Amendment 30

- 13 A new schedule would be introduced to the Bill which would extend to Scotland. It would make various amendments to legislation in relation to the placing of children in secure accommodation in Great Britain.
- 14 The new schedule would amend section 25 of the Children Act 1989 so that it extends to Scotland and allows local authorities in England and Wales to place children in secure accommodation in Scotland. The amendment to section 25 would also provide for the enforcement of secure accommodation orders made by the courts of England and Wales in Scotland as it would provide authority for secure units in Scotland to restrict liberty under those orders.
- 15 The schedule would make consequential amendments to the Children (Secure Accommodation) Regulations 1991 which would extend to Scotland in part. The amendments would extend to Scotland those provisions of the 1991 Regulations that relate to the maximum periods that a child can be placed and kept in secure accommodation by English local authorities initially, and thereafter be authorised to be kept there by the courts.
- 16 The schedule would also make consequential amendments to the Secure Accommodation (Scotland) Regulations 2013. It would disapply regulation 5 of those regulations in respect of children placed in Scotland under section 25 of the 1989 Act to ensure that there is no substantive difference between the maximum periods provided for in that regulation and the equivalent period provided in the 1991 Regulations. An amendment would also be made to regulation 15 of the 2013 Regulations to ensure that the Secretary of State or the Welsh Ministers are entitled to relevant records relating to children placed in Scotland on request.

Commons Amendments 22-25

- 17 These amendments would provide for certain of the Bill's provisions to be extended to Scotland where it is necessary to do so in order to give legal effect to the placement of looked after children in secure accommodation in Scotland.

Commons Amendment 26

- 18 This would ensure that Part 3 of the Bill, which contains the power to make transitional and consequential regulations extends throughout the United Kingdom, and would amend the term 'enactment' to 'provision' to ensure that references to Scottish legislation are correctly described.

Commons Amendments 27 and 28

- 19 These amendments would provide for amendments 9 and 30 (placing children in secure accommodation elsewhere in Great Britain) to come into force on the passing of the Bill.

Commons Amendments to Clauses 11 and 32: Power to secure proper performance; and Chapter 2: Consequential amendments

Commons Amendments 10 and 11

- 20 These amendments would move the specified clauses to new positions in the Bill to aid clarity of reading.

Commons Amendments after Clause 32: Education relating to relationships and sex; and Other personal, social and economic education

Commons Amendment 12

- 21 Amendment 12 would place a duty on the Secretary of State to make regulations that would require all schools in England to provide relationships education to pupils of compulsory school age receiving primary education and relationships and sex education to pupils receiving secondary education. The duty would apply in relation to Academy schools and independent schools as well as maintained schools.
- 22 Subsection (2) sets out matters that would have to be included in the regulations.
- 23 Subsections (3) and (4) would make further provision with respect to content of such guidance. In particular, subsection (3) specifies that such guidance would have to be given with a view to ensuring that pupils learn about specified matters and that the education is appropriate having regard to age and religious background.
- 24 The subsection (1) duty to make provision by regulations could be discharged by making that provision by regulations under another Act (subsection (7)). Before making the regulations, the Secretary of State would be under a duty to consult such persons as the Secretary of State considers appropriate (subsections (5) and (7)).
- 25 Subsection (6) would provide that the regulations could amend any provision (including provision conferring powers) that is made by or under the Act specified in that subsection. Subsection (8) sets out that the provision which could be made under the regulations by virtue of clause 70 of the Bill may include provision amending, repealing, or revoking any provision made by or under any Act or other instrument or document, whenever passed or made. Subsection (6) consists of the legislation that sets out the current duty for schools to provide sex education or, for those schools that are not under that duty, consists of the legislation which is most likely to be amended to include the new legislative requirements to be imposed by way of regulations made under sub-section (1)).

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Commons Amendment 13

- 26 Amendment 13 would provide a power for the Secretary of State to make regulations that would require all schools in England to provide personal, social, health and economic education to pupils of compulsory school age receiving primary and secondary education. The power could be exercised in relation to all schools, or just in relation to schools of a particular kind, for example Academy schools and maintained schools. Further detail on the policy intention is set out in the policy statement here:
<https://www.gov.uk/government/publications/relationships-education-rse-and-pshe>.
- 27 Subsection (2) sets out matters which may be included in the regulations.
- 28 The subsection (1) power to make provision by regulations could be discharged by making that provision by regulations under another Act (subsection (9)). Before making the regulations, the Secretary of State would be under a duty to consult such persons as the Secretary of State considers appropriate (subsections (3)) except to the extent that another power to make provision provides otherwise (subsection (9)).
- 29 Subsection (4) provides that the regulations could amend any provision (including provision conferring powers) that is made by or under the Act specified in that subsection; and the provision which could be made under the regulations by virtue of clause 70 of the Bill may include provision amending, repealing, or revoking any provision made by or under any Act or other instrument or document, whenever passed or made (subsection (5)).
- 30 Subsection (9) would preserve existing powers to make provision for this education.

Commons Amendments after Clause 38: Improvement standards

Commons Amendment 14

- 31 Subsection (1) of this clause would allow the Secretary of State to determine and publish improvement standards for social workers in England. The Secretary of State would also be able to carry out assessments of whether people meet these improvement standards. There would be a power under subsection (2) for the Secretary of State to arrange for someone else to do any or all of these things.
- 32 Subsection (3) would require the Secretary of State to consult with such persons as the Secretary of State considers appropriate before determining any improvement standards.
- 33 Subsection (4) explains that an improvement standard is a professional standard the attainment of which demonstrates particular expertise or specialisation.
- 34 This clause would not limit anything in clause 47 (professional standards) (subsection (5)).

Commons Amendments after Clause 41: Ensuring adequate provision of social work training; and Exercise by Special Health Authority of functions under section (Ensuring adequate provision of social work training)

Commons Amendment 15

- 35 This new clause is intended to replace the functions of the Secretary of State under section 67 of the Care Standards Act 2000 in respect of social workers in England.
- 36 Subsection (1) would provide power to the Secretary of State to take such steps as the Secretary of State considers appropriate (a) to ensure that adequate provision is made for social work training; and (b) to encourage individuals resident in England to undertake social work training.

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- 37 Subsection (2) would allow the power under subsection (1), in particular, to be used to provide financial or other assistance (subject to any conditions the Secretary of State considers appropriate): (a) for individuals resident in England to undertake social work training; (b) for organisations providing social work training.
- 38 Subsection (3) would provide for functions of the Secretary of State under this new clause to be exercised by any person, or by employees of any person, authorised to do so by the Secretary of State.
- 39 Subsection (4) would provide for Part 2 of the Deregulation and Contracting out Act 1994 to have effect for the purpose of determining (a) the terms and effect of an authorisation under subsection (3) and (b) the effect of so much of any contract made between the Secretary of State and the authorised person as relates to the exercise of the function, as if the authorisation were given by virtue of an order made under section 69 of the 1994 Act.
- 40 Subsection (5) would define "social work training" for the purposes of the new clause.

Commons Amendment 16

- 41 This new clause is based on existing powers under section 67A of the Care Standards Act 2000. The new clause would allow the Secretary of State to require a Special Health Authority to exercise the function, under the new clause inserted by Commons amendment 15, of giving financial assistance to social workers. This power is already in existence under section 67A of the 2000 Act.
- 42 Subsection (1) would provide power to the Secretary of State to direct a Special Health Authority to exercise functions under new clause 17(1)(b) so far as relating to the provision of financial or other assistance.
- 43 Subsection (2) would provide for the National Health Service Act 2006 to have effect as if (a) any direction under subsection (1) of this amendment were a direction under section 7 of the 2006 Act and (b) any functions exercisable by the Special Health Authority by virtue of a direction under subsection (1) were exercisable under section 7 of the 2006 Act.
- 44 Subsection (3) would ensure that directions under subsection (1) must be given by an instrument in writing and may be varied or revoked by subsequent directions.

Commons Amendments to Clause 55: Repeal of existing powers to regulate social workers

Commons Amendments 17, 18 and 19

- 45 Amendments 17, 18 and 19 would add consequential amendments to clause 55 of the Bill.
- 46 Amendment 17 would adjust a consequential amendment in clause 65, which would currently insert wording after section 60(2ZE) of the Health Act 1999, so that the wording would instead be substituted in place of subsection (2ZE). The Commons Amendment to Clause 66 referred to below would be intended to replace subsection (2ZE) of the Health Act 1999.
- 47 Amendment 18 would tidy up the wording at clause 55 of the Bill in relation to section 60A of the Health Act 1999. Clause 65(3)(a) of the Bill removes section 60A(2A)(b) of the Health Act 1999. Amendment 15 would further amend section 60A(2A)(c), as a consequence, to substitute the word "section 60" for "that section".
- 48 Amendment 19 would add a consequential amendment to clause 55. Clause 55 would remove the definition of "social work profession in England" from the Health Act 1999. Amendment

16 would make consequential amendment to schedule 3 of that Act to reflect this change, in order to ensure that those engaging in social work in England would continue to be excluded from definitions of social care work in England and social care workers in England for the purposes of paragraph 11 of Schedule 3 to the Health Act 1999.

Commons Amendments after Clause 55 and new Schedule after Schedule 3: Amendments to do with this part/Part 2

Commons Amendments 20 and 33

- 49 The new clause would add a new schedule of minor and consequential amendments relating to Part 2 of the Bill.
- 50 Clause 55 of the Bill would already make provision regarding the repeal of existing powers (in section 60 and 60A of the Health Act 1999) to regulate social workers. Paragraphs 10 - 27 of the new schedule would amend the Health and Social Work Professions Order 2001, made under section 60 of the Health Act 1999, to repeal relevant provisions relating to the regulation of social workers in England. Paragraph 45 of the new schedule would change the title of the Health and Social Work Professions Order 2001 to the Health Professions Order 2001. Paragraphs 46 to 48 would make consequential changes to the legislation referred to in those paragraphs as a result.
- 51 As existing provisions relating to the regulation of social workers in the Health Act 1999 and the Health and Social Work Professions Order 2001 would be repealed, consequential amendments would be made by the new schedule to various provisions of primary legislation, to reflect the transition that would occur from the current regulator to the new regulator. In some cases, reference to the new regulator and the new regulatory regime would be added to relevant legislation, either in addition to or instead of the current regulator - paragraphs 1, 4, 29, 32, 33 to 35 and 39 to 44 would make such amendments. In other cases, amendments would simply reflect that the current regulator would no longer regulate social workers - paragraphs 2, 3, 5, 6, 30, 31 and 36 would make such amendments.
- 52 Paragraphs 7 to 9 of the new schedule amend sections 55 and 67 of the Care Standards Act 2000, in order to remove social workers in England from the scope of section 67. Commons Amendment 15 would replace the Secretary of State's powers under section 67 of the Care Standards Act 2000 in respect of social workers.
- 53 Paragraph 38 of the new schedule would repeal provisions of the Health and Social Care Act 2012 that amended legislation in 2012, as those amendments would now be repealed by the amendments in the new schedule.
- 54 Paragraphs 28 and 37 of the new schedule would amend section 10 of the Adoption and Children Act 2002 and section 2 of the Children and Young Persons Act 2008, respectively. These paragraphs would make amendments to these provisions for immediate purposes in order to ensure that references to a registered social worker include a social worker registered with the Health and Care Professions Council and would make amendments for future purposes to ensure that such references would in future include a social worker registered with Social Work England.

Commons Amendments to Clause 56: Interpretation of Part 2

Commons Amendment 21

- 55 Amendment 21 seeks to clarify the definition of social worker in England in clause 66. It is intended to clarify that a person who is a member of a profession to which section 60(2) of the

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Health Act 1999 applies is not to be treated as a social worker in England by reason only of carrying out work as an approved mental health professional. Approved mental health professionals are often members of other regulated professions so the amendment would avoid dual regulation.

Commons Amendments to Clause 64: Short title

Commons Amendment 29

- 56 This amendment would remove the "privilege" amendment inserted by the House of Lords before the Bill's passage to the Commons in accordance with normal practice.

Commons Amendments to Schedule 3

Commons Amendments 31 and 32

- 57 Amendments 31 and 32 would make minor amendments to schedule 3, ensuring that a legislative provision which currently applies to the current regulator would apply to the new regulator of social workers in England.
- 58 Amendment 31 would be consequential on amendment 32 and seeks merely to tidy up the drafting.
- 59 Amendment 32 would ensure that references in enactments to a regulatory body mentioned in section 25(3) of the National Health Service Reform and Health and Care Professions Act 2002 do not (unless there is express provision to the contrary) include: (a) a reference to Social Work England; or (b) a reference to the Health and Care Professions Council or a regulatory body within section 25(3)(j) of the 2002 Act, so far as it has functions relating to social care workers in England.
- 60 Amendment 32 would ensure that references in enactments to those regulatory bodies listed in section 25(3) of the 2002 Act, in the context of healthcare, do not include social workers in England or social care workers in England, as an unintended consequence.
- 61 Amendment 32 would preserve the effect of section 25(3A) for social workers in England and social care workers in England. The Health and Care Professions Council will no longer regulate social workers in England. Therefore, the reference to the Health and Care Professions Council having a role in relation to social workers in England in this provision would be omitted. Instead, a reference to Social Work England would be inserted. References to the Health and Care Professions Council or a body within subsection (3)(j) are retained in respect of social care workers in England in order to preserve the position for social care workers in England.

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