

HOUSE OF LORDS

Select Committee on the Constitution

2nd Report of Session 2016–17

Children and Social Work Bill [HL]

Ordered to be printed 10 June 2016 and published 13 June 2016

Published by the Authority of the House of Lords

Select Committee on the Constitution

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Committee staff

The current staff of the committee are Antony Willott (Clerk), Dr Stuart Hallifax (Policy Analyst) and Hadia Garwell (Committee Assistant). Professor Stephen Tierney and Professor Mark Elliott are the legal advisers to the Committee.

Contact details

All correspondence should be addressed to the Constitution Committee, Committee Office, House of Lords, London SW1A 0PW. Telephone 020 7219 5960. Email constitution@parliament.uk

Children and Social Work Bill [HL]

1. The Children and Social Work Bill was introduced in the House of Lords on 19 May 2016 and will receive its second reading on 14 June. The main purposes of the Bill are to improve decision making and support for looked after and previously looked after children in England and Wales (Part 1, Chapters 1 and 2 of the Bill); enable better learning about effective approaches to child protection and social care in England (Part 1, Chapter 2 of the Bill); and provide for the establishment of a new regulatory regime for the social work profession in England (Part 2 of the Bill).
2. Before we comment on a number of specific points in the Bill, we have a more general issue to draw to the attention of the House. The Bill grants extensive powers to the Secretary of State—in particular in relation to the Child Safeguarding Practice Review Panel (Clause 11) and the regulation of social workers (Clause 20). While the Delegated Powers and Regulatory Reform Committee will undoubtedly be considering the merits of each of the delegated powers set out in the Bill, these provisions appear to continue the trend we noted in several reports last session—the introduction of legislation that leaves much to the subsequent discretion of ministers. We regret that, despite the concerns expressed in the past by this and other committees,¹ the Government continues to introduce legislation that depends so heavily on an array of broad delegated powers. We will continue to draw this issue to the attention of the House should the trend persist as further bills are introduced this Session.

Part 1: Children

3. The Bill imposes a duty on the Secretary of State to establish a Child Safeguarding Practice Review Panel. Clause 14 allows the Panel to request a person or body to provide information in relation to the panel’s functions. The person or body to whom a request is made “must comply with the request”. This is a broad obligation placed upon organisations and individuals and could possibly include information of an incriminatory nature. There is no explicit exemption for material that would ordinarily be the subject of either legal or medical privilege, although there is a safeguard in that the “information may be used by the Panel, reviewer, or other person or body to whom it is provided only for the purpose mentioned in subsection (1)”. Subsection (1) sets out that the information can be requested for the purpose of enabling or assisting the Panel’s functions.
4. **We would welcome clarification from the Government as to whether it intends that the Child Safeguarding Review Panel will be able to compel the submission of material subject to legal or medical privilege, or information that might be of an incriminatory nature. We take no view as to whether such powers are appropriate, but the House may wish to assure itself that any restriction of these rights is necessary and proportionate in the light of the public policy objectives the Bill seeks to advance.**

¹ Letter from the Chairmen of the Constitution Committee and the Delegated Powers and Regulatory Reform Committee to the Leader of the House of Commons, 22 July 2015: <http://www.parliament.uk/documents/lords-committees/constitution/Correswithministers/ChairmanDPRCtoGraylingLegislation220715.pdf>

Part 2: Social Workers in England

Social Worker Regulations

5. Clause 20 grants the Secretary of State power to make regulations for the purpose of regulating social workers in England. By these regulations, the Secretary of State may appoint a regulator of social workers—who may be the Secretary of State—or establish a new body to be the regulator (Clause 21), as well as define the functions and powers of the regulator. **We would expect the creation of a significant statutory body, such as a regulator, to be enacted by primary legislative provision to enable proper parliamentary scrutiny. The House may wish to consider whether it is appropriate for the creation of a regulator of social workers to be left entirely in the hands of the Secretary of State, rather than set out to some degree on the face of the Bill.**
6. Among these powers, Clause 34 sets out that social worker regulations may create offences, mainly relating to Clause 22 (which permits the establishment of a register of social workers) and Clause 23 (which allows restrictions to be placed on those who are permitted to carry out social work). If offences are created, they may only be summary offences, not punishable with imprisonment.
7. In its 2009 report on the Co-operative and Community Benefit Societies and Credit Unions Bill, this Committee stated that “It would be preferable for the [Government] first to decide which offences and penalties it wished to provide for, and then come to Parliament with legislation, rather than ... first asking Parliament for the power to create new offences and only afterwards deciding what offences should be created”.²
8. Clause 34 appears to raise similar issues. The Clauses to which the offences will relate—Clauses 22 and 23—contain little detail on the face of the Bill but will themselves need to be defined and implemented by regulations. It is therefore difficult to ascertain how Parliament may properly scrutinise or debate the offences that may be created under this Clause during the passage of the Bill. From a constitutional point of view, the creation of criminal offences, whether or not punishable by imprisonment, should be subject to proper and full parliamentary scrutiny. **The House may wish carefully to consider how it can appropriately scrutinise the creation of criminal offences which are not only themselves undefined but which will relate to other legislative provisions that are also still to be delineated.**

² Constitution Committee, *Co-operative and Community Benefit Societies and Credit Unions Bill*, (19th Report, Session 2008–09, HL Paper 158).

