

Get in on the Act

Children and Social Work
Act 2017

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Background

The Children and Social Work Bill was introduced in the House of Lords on 19 May 2016, completed its parliamentary stages on 4 April 2017 and received Royal Assent, becoming law on 27 April 2017.

The Children and Social Work Act 2017 (the Act) is intended to improve support for looked after children and care leavers, promote the welfare and safeguarding of children, and make provisions about the regulation of social workers. The Act sets out corporate parenting principles for the council as a whole to be the best parent it can be to children in its care. These are largely a collation of existing duties local authorities have towards looked after children and those leaving care. Local authorities will be required to publish their support offer to care leavers and to promote the educational attainment of children who have been adopted or placed in other long-term arrangements. The legislation extends the current considerations of the court when making decisions about the long-term placement of children to include an assessment of current and future needs and of any relationship with the prospective adopter.

The Act makes changes to the arrangements for local child safeguarding partnerships and the serious case review process, including provision for a central Child Safeguarding Practice Review Panel for cases of national importance. It also establishes a new regulatory regime for the social work profession.

The Act is made up of three parts as follows:

1. Children
2. Social workers in England
3. General

This publication aims to provide readers with an introduction to the Act and summarises the main issues on which the LGA campaigned.

The role of the LGA and local government in influencing the legislation

We worked with Local Government Association (LGA) Vice-Presidents, ministers, parliamentarians, and civil servants as the Bill made its way through Parliament to provide background information on the proposals, support and table amendments to the legislation, and influence government policy. We gave evidence to both the Bill Committee and parliamentary committees on children's social care.

Our campaigning on behalf of local government was developed with the support from and input of councils across the country.

Key highlights include:

- The Government listened to the LGA's call for sex and relationships education (SRE) to be made compulsory in all secondary schools and amended the legislation to this effect. Through the passage of the Bill we made clear that the requirement should apply to all schools, including academies and free schools. We also recommended that the regulations should allow parents to request that their children be able to opt out of the lessons.
- We welcomed the provisions that establish new arrangements for child safeguarding partnerships between different agencies. We previously published research highlighting issues with the current operation of local safeguarding children boards (LSCBs) and calling for local authorities and their partners to have the freedom to develop a more flexible approach that fits local circumstances. However, we cautioned that the role of agencies other than local authorities, health and the police would need to be clarified in guidance, particularly in relation to schools.
- We raised concerns about direct ministerial control over the new social work regulator and were pleased the Government redrafted Part 2 of the Bill to give Social Work England greater statutory independence. The LGA is part of the advisory group for the development of Social Work England.
- The Bill initially contained provisions allowing the Secretary of State to relax or amend children's social care legislation in a local authority in intervention without proper local consultation or consent. We worked with parliamentarians and the Government to remove this power for the Secretary of State to grant freedoms to a third party running children's services where an authority is in intervention. The proposal to relax or amend social care legislation was subsequently withdrawn by the Government.
- We welcomed the legislation's strong focus on support for children and care, acknowledging that corporate parenting is one of the most important roles councils have. Throughout the debates we called for new burdens to be fully funded to ensure that resources are not diverted from other services for vulnerable children which are already stretched.

The key provisions and their implications for local government

Part 1: Children, chapter 1: looked after children

Section 1 introduces seven principles of corporate parenting which local authorities must have regard to for looked after children or care leavers, whether or not they are or were the local authority looking after the child. The principles are to have regard to: the need to act in the best interests of, and to promote the health and wellbeing of relevant children and young people; the need to encourage relevant children and young people to express their views, wishes and feelings; the need to take account of a relevant child or young person's views, wishes and feelings; the need to help relevant children and young people to gain access to and get the best use of the services provided by the local authority and its partners; the need to promote high aspirations amongst relevant children and young people and the need to secure the best outcomes; the need for relevant children and young people to be safe and for stability in their home lives, relationships and education or work; and the need to prepare relevant children and young people for adulthood and independent living.

Section 2 requires local authorities to publish information about the services it offers to care leavers which may assist them in preparing for adulthood and independent living. These services may include health and wellbeing, education and training, employment, accommodation, and participation in society. It is distinct from the special educational needs and disability (SEND) local offer stipulated by the Children and Families Act 2014.

Section 3 requires local authorities to appoint a personal adviser for care leavers who request one up until the age of 25, regardless of whether the young person intends to pursue education or training. The local authority also has a duty to carry out an assessment of the young person's needs and to provide the necessary advice and support.

Section 4 places a duty on local authorities to make advice and information available to parents, designated teachers in maintained schools, and academies to promote the educational achievement of looked after children. A local authority must appoint an officer employed by them or another authority to discharge the duty to provide advice and information.

Section 5 places a duty on the governing body of a maintained school to designate a member of school staff to have responsibility for promoting the educational achievement of previously looked after children, including those who are now the subject of an adoption, special guardianship or child arrangements order.

Section 6 imposes provision in all existing and new academy agreements which requires the proprietor of an academy to designate a member of staff to have responsibility for promoting the educational achievement of relevant children and young people. The proprietor must ensure that person undertakes training and has regard to guidance issued by the Secretary of State.

Section 7 amends the Children and Young Persons Act 2008 to require the governing body of a maintained school to ensure that the designated teacher for looked after pupils has regard to any guidance from the Secretary of State. Previously, only the governing body was required to do so.

Section 8 extends the definition of the permanence provisions in the Children Act 1989 so that it includes kinship care, adoption, and other types of long-term care. The courts will now be required to consider the impact on the child concerned of any harm they have or are likely to have suffered; their current and future needs, and the way in which the long term plan for the child's upbringing would meet those current and future needs.

Section 9 amends the Adoption and Children Act 2002 and requires courts and adoption agencies to consider the child's relationship with their prospective adopters in decisions relating to the adoption if the child has been placed with those prospective adopters.

Section 10 amends legislation to allow local authorities in England and Wales to place children in secure accommodation in Scotland.

Section 11 contains consequential amendments to other Acts.

Part 1: Children

Chapter 2: safeguarding of children

Section 12 adds a new section to the Children Act 2004. It places a duty on the Secretary of State to establish a national Child Safeguarding Practice Review Panel and allows her to appoint and remove members of the panel, including a chairperson. The Secretary of State may make arrangements regarding the panel's proceedings, reports, staff, facilities, pay and expenses.

Section 13 sets out that the functions of the Child Safeguarding Practice Review Panel are to identify serious child protection cases in England which raise issues that are complex or of national importance, and to arrange for such cases to be reviewed under their supervision. The stated purpose of these reviews is to ascertain what lessons can be learned about the way in which local authorities or others should work to safeguard children. The reports must be published unless the panel consider it inappropriate to do so, in which case they must publish any information relating to the lessons to be learned that they consider appropriate.

Section 14 requires local authorities to notify the Child Safeguarding Practice Review Panel of events relating to the death of or serious harm to a child who is known or suspected to have been abused or neglected, or the death of a child who was looked after by the local authority or was in a regulated setting.

Section 15 sets out the requirement on persons or bodies to supply information to the Child Safeguarding Practice Review Panel on request.

Section 16 adds a new section to the Children Act 2004, setting out revised arrangements for local multi-agency safeguarding partnerships to replace the previous model of local safeguarding children boards (LSCBs). Under the new provisions, safeguarding partners for a local authority area (named as the local authority, clinical commissioning group and police) are required to make arrangements for themselves and relevant agencies to work together in exercising their functions for the purpose of safeguarding and promoting the welfare of children in the area.

Section 17 adds a new section to the Children Act 2004 requiring local safeguarding partners to identify serious child safeguarding cases which raise issues of importance to the area and, where they consider it appropriate, to arrange for those cases to be reviewed under their supervision. The stated purpose of such reviews is to identify any improvements that should be made by persons in the area to safeguard and promote children's welfare. Their report on the outcome of the review must be published, unless they consider it inappropriate to do so, and must be given to the Secretary of State and the Child Safeguarding Practice Review Panel. The Secretary of State may make regulations about various issues relating to local child safeguarding practice reviews.

Section 18 makes further provisions regarding local child safeguarding practice reviews, including enabling the Secretary of State to make regulations which provide for enforcement and requiring the safeguarding partners to prepare and publish a report on their work at least once every 12 months.

Section 19 sets out the requirements on persons or bodies to supply information to the safeguarding partners on request.

Section 20 allows the safeguarding partners for a local authority area in England to make payments either directly, or by contributing to a fund from which payments can be made, towards expenditure incurred in by the local child safeguarding practice reviews.

Section 21 enables the safeguarding partners for two or more local authority areas in England to agree that their areas are treated as a single area and to allow those authorities to arrange for one of them to carry out the functions on behalf of the other.

Section 22 specifies that safeguarding partners and relevant agencies for a local authority area in England must have regard to any guidance given by the Secretary State in respect of local child safeguarding practice reviews. This may include guidance about circumstances in which it may be appropriate for a serious child safeguarding case to be reviewed and matters to be taken into account in deciding whether a review is making satisfactory progress, or whether a report is of satisfactory quality.

Section 23 contains definitions of terms used in the legislation.

Section 24 amends the Children Act 2004, setting out a requirement on child death review partners (named as the local authority and clinical commissioning group) for a local authority area in England to make arrangements for the review of each death of a child normally resident in the area. They may also make arrangements for the review of a death in their area of a child not normally resident there if they consider it appropriate. The purpose of the review is to identify any matters relating to the death that are relevant to the area or to public health and safety, and to consider whether it would be appropriate for anyone to take action in relation to any matter.

Section 25 specifies that any of the child death review partners in a local authority area in England can, for the purposes of enabling or assisting the performance of the child death review partner's functions, request a person or body to provide information to the child death review partner or any other child death review partner in the area or another person or body. A person or body requested to provide information under this section must comply with the request.

Section 26 allows the child death review partners for a local authority area in England to make payments towards expenditure incurred. This can be done either by making payments directly or contributing to a fund out of which payments may be made. It allows the child death review partners to provide staff, goods, services, accommodation or other resources to any person for purposes connected with the child death review arrangements.

Section 27 enables the child death review partners for two or more local authority areas in England to agree that their areas are treated as a single area and allows those authorities to arrange for one of them to carry out the functions on behalf of the other.

Section 28 specifies that child death review partners for a local authority area in England must have regard to any guidance given by the Secretary of State in connection with these functions.

Section 29 provides that regulations regarding local child safeguarding practice reviews must be made by the affirmative procedure where both Houses of Parliament must expressly approve them.

Section 30 removes provisions in the Children Act 2004 relating to Local Safeguarding Children Boards which are replaced by the new safeguarding arrangements outlined in section 16.

Section 31 contains consequential amendments to other Acts.

Chapter 3: Other provisions relating to children's social care

Section 32 amends the Employment Rights Act 1996 and inserts new whistleblowing arrangements to prohibit employers discriminating against a person who applies for a children's social care position because it appears to the employer that the applicant has made a protected disclosure.

Section 33 enables the Secretary of State to intervene in a combined authority where children's social care functions are not being performed to an adequate standard, in line with existing powers to intervene in individual local authorities.

Chapter 4: relationships, sex and PSHE education

Section 34 places a duty on the Secretary of State to make regulations that require all schools in England to provide relationships education to pupils receiving primary education, and relationships and sex education to pupils receiving secondary education. The duty applies in relation to academy schools and independent schools as well as maintained schools. The education must be appropriate having regard to age and religious background, and regulations must detail the circumstances in which a pupil can be excused from receiving that education. The regulations will be consulted on.

Section 35 provides 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 receiving primary or secondary education. The regulations will be consulted on.

Part 2: Social workers in England

Section 36 establishes a new regulator, Social Work England, and gives the Secretary of State the power to make regulations to rename the regulator. Such regulations would be subject to a negative procedure, whereby it will automatically become law without debate unless there is an objection from either the House of Lords or the House of Commons.

Section 37 sets out that the overarching objective of the regulator is the protection of the public. This involves pursuing three objectives: protecting, promoting and maintaining health, safety and well-being of the public; promoting and maintaining public confidence in social workers in England; and promoting and maintaining proper professional standards for social workers in England.

Section 38 enables the Secretary of State, through regulations, to permit or require Social Work England to appoint one or more individuals to advise it and to make regulations regarding the functions of those appointed.

Section 39 requires Social Work England to keep a register of social workers in England. The Secretary of State may, through regulations, also require Social Work England to keep a register of those undertaking education or training in England to become social workers.

Section 40 allows the Secretary of State to make regulations imposing prohibitions or restrictions on the use of social work titles or descriptions. The provisions could enable carrying out social work functions to be restricted to qualified social workers.

Section 41 requires the regulator to determine and publish professional standards for social workers in England and standards of conduct or ethics for registered students if it is required. The regulator is required to consult with such persons it considers appropriate and obtain the Secretary of State's approval for the standard being set.

Section 42 allows the Secretary of State to determine and publish improvement standards for social workers in England and carry out assessments of whether people meet these improvement standards. The standards will be consulted on.

Section 43 requires the regulator to determine and publish standards of education or training for people who are or who wish to become social workers in England. The regulator is required to consult and to obtain the Secretary of State's approval for the standard being set.

Section 44 requires the regulator to make arrangements for protecting the public from social workers in England whose fitness to practise is impaired and to make arrangements for taking other disciplinary action against social workers in England. The Secretary of State may make regulations to require the regulator to make arrangements for taking disciplinary action against registered students. Regulations may address the circumstances in which a person's fitness to practise is impaired or disciplinary action may be taken; the appointment of assessors, examiners or legal or other advisers; and temporary measures that may be taken against a person pending the outcome of an investigation.

Section 46 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. It provides power to the Secretary of State to take such steps to ensure that adequate provision is made for social work training and to encourage people to undertake social work training.

Section 47 provides power to the Secretary of State to direct a Special Health Authority to exercise functions under section 46 so far as relating to the provision of financial or other assistance for social work training.

Section 48 allows the Secretary of State, through regulations, to amend the sections of the Mental Health Act 1983 that deal with the approval of courses for approved mental health professionals in England. Regulations may transfer functions of the Health and Care Professions Council to Social Work England and give Social Work England the power to charge fees for approving courses.

Section 49 amends the Mental Capacity Act 2005 to allow training in connection with best interest assessments to be specified by Social Work England or the Secretary of State.

Section 50 allows the Secretary of State, through regulations, to confer power on the regulator to charge fees in connection with registration; assessing whether a person meets a professional standard relating to proficiency; approval of an education or training course or qualification. The regulator is required to consult and to obtain the Secretary of State's approval before determining the level of any fee.

Section 51 permits the Secretary of State to fund the regulator through grant payments, which may be subject to any conditions the Secretary of State considers appropriate.

Section 52 permits the regulator to publish or disclose information, or to give advice, about any matter relating to its functions. The Secretary of State may publish regulations regarding information and advice from Social Work England.

Section 53 requires the regulator to co-operate where appropriate with Social Care Wales, the Scottish Social Services Council, the Northern Ireland Social Care Council, and any other person specified in regulations made by the Secretary of State.

Section 54 requires the regulator to provide any information that the Secretary of State requests in relation to the exercise of its functions.

Section 55 enables the Secretary of State to take action by giving the regulator a remedial direction in the event that the regulator has defaulted in performing any of its functions and not remedied the default.

Section 56 makes provision for the Professional Standards Authority for Health and Social Care to oversee Social Work England.

Section 57 allows regulations to confer functions on the regulator or a Minister of the Crown.

Section 58 requires the Secretary of State to carry out a public consultation in advance of making regulations.

Section 59 sets out that all the regulations mentioned under Part 2 are to be subject to the affirmative resolution procedure whereby both Houses of Parliament must expressly approve them. The exception is section 36 regarding regulations to change the name of the regulator, which are subject to the negative resolution procedure. In this case, it will become law without debate unless there is an objection from either the House of Lords or the House of Commons.

Section 60 provides power for the Secretary of State to make a scheme to transfer property, rights and liabilities from the Health and Care Professions Council to Social Work England.

Section 61 makes provision regarding the repeal of existing powers in the Health Act 1999 to regulate social workers.

Section 62 contains consequential amendments to other Acts.

Section 63 contains definitions of terms used in the legislation.

Section 64 requires the Secretary of State to commission an independent person to review the operation of Part 2 of the Act within five years of the register coming into force and provide a report on the findings to the Secretary of State. The independent person is required to consult with representatives of social workers in England and anyone else they consider appropriate. The Secretary of State must lay the report and a response before Parliament.

Thank you

Throughout the passage of the legislation through Parliament we worked closely with our Vice-Presidents, as well as other MPs and Peers, briefing them ahead of debates and suggesting amendments. On behalf of local government, we are grateful to all those parliamentarians who supported us and championed the concerns and arguments of the sector.

Useful links

For the full text of the Act, please refer to:

[www.legislation.gov.uk/ukpga/2017/16/
contents/enacted](http://www.legislation.gov.uk/ukpga/2017/16/contents/enacted)

For LGA's briefings on the Bill, please go to:

[www.local.gov.uk/parliament/briefings-and-
responses/children-and-social-work-bill](http://www.local.gov.uk/parliament/briefings-and-responses/children-and-social-work-bill)



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