



EXPLANATORY NOTES

Children and Social Work Act 2017

Chapter 16

£10.00

CHILDREN AND SOCIAL WORK ACT 2017

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Children and Social Work Act 2017 (c. 16) which received Royal Assent on 27 April 2017.

- These Explanatory Notes have been prepared by the Department for Education in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

1 The Act has four main purposes:

- Improving decision making, and support for looked after and previously looked after children in England and Wales.
- Improving joint work at the local level to safeguard children and enabling better learning at the local and national levels to improve practice in child protection.
- Promoting the safeguarding of children by providing for Relationships and Sex Education in schools.
- Enabling the establishment of a new regulatory regime specifically for the social work profession in England.

Policy background

- 2 The Act provides the legislative framework to support a programme of reform in children's social care set out in the Government's July 2016 policy paper [Putting Children First](#).
- 3 It also supports the Government's policy to promote the safeguarding of children through the provision of [Relationships and Relationships and Sex Education](#).

Looked after children

- 4 Local authorities have a wide range of duties to children they look after and to those leaving their care. The Act sets out a framework of corporate parenting principles that overlay these existing responsibilities 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 also requires 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 in order to obtain support from a personal adviser and get other help from the local authority. This is part of a wider [programme of work to support care leavers](#).
- 5 The Act amends the current considerations of the court when making decisions about the long-term placement of children. The considerations now include such provisions of the child's Care Plan which assess the child's current and future needs, including any current and future needs resulting from the impact of any harm that the child suffered (or was likely to have suffered); and in adoption decisions, considerations now include the child's relationship with any prospective adopter. The Act also extends the existing duties of local authorities and schools to promote the educational attainment of children so that these duties also cover children who have been adopted or placed in other long-term arrangements. This is part of a wider [programme of reform for adoption](#).
- 6 The Act also closes a gap in the existing legislation, establishing a statutory basis whereby English and Welsh local authorities may place looked after children in secure accommodation in Scotland.

Safeguarding of children

- 7 Currently, joint working at the local level to protect children is coordinated through Local Safeguarding Children Boards in each local authority, and where serious incidents of child harm occur, reviews are conducted at a local level. The Act reframes the approach to local safeguarding by giving the three key safeguarding partners – the local authority, health services, and the police – greater autonomy to define the approach to be taken locally and the appropriate geographical reach of that approach. It also makes provision for the establishment of a national Child Safeguarding Practice Review Panel. Where cases raise issues of national importance the Panel will, where they consider it appropriate, arrange for these to be reviewed under their supervision and must publish either the report, or if they consider it inappropriate to do so, any information relating to improvements that should be made following the review that they consider it appropriate to publish.

Other provisions relating to children

- 8 The Act extends the range of protections afforded to those who have made a protected disclosure – commonly referred to as whistle blowers. Currently, employment law protects employees in children's social care (among other sectors) from discrimination by their employers. The Act extends these protections by conferring a regulation-making power on the Secretary of State to secure that an applicant for a job in children's social care who has

previously made a protected disclosure cannot be discriminated against in recruitment decisions.

- 9 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 Act 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.

Relationships, sex and PSHE education

- 10 The Education Acts of 1996 and 2002 and the Education (Independent School Standards) Regulations 2014 set out schools' current duties in relation to the teaching of sex education and PSHE. The Act provides for the amendment of these current duties, and to legislation set out in subsections (6) and (4) of sections 34 and 35 respectively, to make it mandatory to teach Relationships Education in primary schools, Relationships and Sex Education in secondary schools, and provides a power to make it mandatory to teach Personal Social Health and Economic Education in all schools.

Social workers

- 11 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.
- 12 The Act responds to reviews of social work education by Sir Martin Narey and Professor David Croisdale-Appleby by making provision to establish a specialist regulator of social workers in England: Social Work England. Social Work England role will include keeping a register of social workers in England; determining eligibility for registration; and setting professional standards and standards of education or training for those who wish to become social workers in England; and determine an individual social worker's fitness to practice. The Act also amends existing legislation, or provides for amendments to be made, in order to transfer the function of approving courses for approved mental health professionals from the HCPC to Social Work England and in order to allow for Social Work England to specify training for best interest assessors. This is part of a wider programme of [social care reform](#).
- 13 The Act also makes consequential and minor amendments relating to these changes, including replacing provisions in existing legislation relating to social work training, bringing together the existing framework governing the social work profession into a single body of legislation.

Legal background

Looked after children

Corporate parenting principles

- 14 The term “corporate parent” is generally 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 whom 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 referred to as “care leavers”.
- 15 The 1989 Act and legislation made under it impose 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 the child or young 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 make arrangements to promote cooperation with specified partners with a view to improving the wellbeing of children in their area. Section 11 of the Children Act 2004 further requires a local authority in England to make arrangements to ensure that their functions are discharged having regard to the need to safeguard and promote the welfare of children. Section 19 of the Children and Families Act 2014 requires a local authority to have regard to the need to support and involve children and young people when exercising functions in connection with special educational needs and disability.

Care leavers in England

- 16 The term “care leavers” is used to describe those children and young people who fall within scope of local authority duties set out in sections 23A to 24D of the 1989 Act.. 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.
- 17 Sections 23B and 23C of the 1989 Act impose duties on local authorities to provide assistance and support to relevant children and former relevant children (namely, children who were formerly looked after by a local authority). Included in the assistance to be provided is the duty to appoint 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.

Educational achievement

- 18 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.
- 19 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. Regulation 3 of the Designated Teacher (Looked after Pupils) (England) Regulations 2009 requires that the designated person must have qualified teacher status.

Care and adoption proceedings in England and Wales

- 20 Section 31 of the 1989 Act enables a court, on the application of a local authority (or authorised person) to make a care order which places a child in the care of a local authority. A court may only make such an order if it is satisfied that the section 31(2) 'threshold test' has been met and that making the order would be in the child's best interests.
- 21 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.
- 22 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.

Secure accommodation

- 23 For some years, local authorities in England and Wales have sought court orders under section 25 of the 1989 Act, authorising the placement of looked after children in secure accommodation in Scotland. In September 2016 a High Court judgment (Re X & Y 2016 EWHC 2271 (Fam)) identified that such orders did not have force in Scotland, and consequently that they were unenforceable there.

Safeguarding of children

- 24 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 an LSCB are set out in section 14 of that Act, and further functions are conferred by the Local Safeguarding Children Boards Regulations 2006. The function of undertaking a serious case review in cases where abuse or neglect is suspected and a child has died or has been seriously harmed currently lies with the LSCB under regulation 5(1) (e) and 5(2) of the 2006 Regulations. The function in relation to child deaths currently lies with the LSCB under regulation 6 of the 2006 Regulations. The LSCB is responsible for ensuring the collection and analysis of information about each death (with a view to identifying the need for a review by a child death overview panel); matters of concern affecting the safety and

welfare of children in the area of the authority and any wider public health or safety concerns arising from a particular death or from a pattern of deaths in that area; and for putting in place procedures for ensuring that there is a coordinated response by the authority, their board partners and any other relevant persons to an unexpected death.

Other provisions relating to children in England

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

- 25 The Public Interest Disclosure Act 1998 (“PIDA”) established a whistleblowing framework, the purpose of which is set out in the preamble as “to protect individuals who make certain disclosures of information in the public interest; to allow such individuals to bring action in respect of victimisation”. The whistleblowing framework currently operates within the scope of employment law and complaints brought in relation to PIDA are dealt with by the employment tribunals. The legislation protects employees or “workers” from being subjected to either detriment or dismissal on the ground that they have made a protected disclosure.
- 26 A worker who blows the whistle, by making a protected disclosure in accordance with the criteria set out in Part IVA sections 43B to 43H of the Employment Rights Act 1996, has the right not to be unfairly dismissed or suffer a detriment as a result of having made that disclosure.
- 27 Currently, job applicants, in general, do not fall within the definitions of worker. However, section 49B of the ERA provides a power to the Secretary of State to make regulations prohibiting an NHS employer from discriminating against an applicant because it appears to the NHS employer that the applicant has blown the whistle. Section 49B was inserted into the ERA by sections 149(1) and (2) of the Small Business, Enterprise and Employment Act 2015.

Combined authority functions relating to children

- 28 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 Government Devolution 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.

Relationships, sex and PSHE education

- 29 The Education Acts of 1996 and 2002 and the Education (Independent School Standards) Regulations 2014 set out schools' current duties in relation to the teaching of sex education and PSHE. Section 80 of the Education Act 2002 currently imposes a duty on maintained secondary and maintained special secondary schools to provide sex education for all registered pupils at these schools. Sections 403 to 405 of the Education Act 1996 set out further conditions when sex education is taught including the requirement for governing

bodies and head teachers to have regard to the Secretary of State's guidance, to make, and keep up to date, a separate written statement of their policy with regard to the provision of sex education and for a pupil to be excused from receiving sex education. Paragraph 2(2)(d) of Schedule 1 of the Education (Independent School Standards) Regulations 2014 currently places a requirement on Independent schools (not including Academies) to teach PSHE.

Social workers in England

Regulation of social workers in England and associated provisions

- 30 Social work has existed as a profession for many years, but it has only been subject to statutory regulation since 2001. Between 2001 and 1 August 2012, social workers and social work students were regulated by the General Social Care Council ("GSCC"). The GSCC was an executive, non-departmental public body in England established under Part 4 of the Care Standards Act 2000 ('the CSA 2000'), sponsored by the Department of Health and abolished as part of an arm's-length body review. Its functions were moved to the Health Professions Council which then became the 'Health and Care Professions Council' to reflect its wider remit ('the HCPC') under provisions in the Health and Social Care Act 2012. Part 4 of the CSA 2000 was amended by the HSCA 2012 to remove references to the GSCC and to reflect the transfer of regulation to the HCPC.
- 31 The Secretary of State has certain functions in relation to social care workers (which includes social 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.
- 32 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').
- 33 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.
- 34 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

- 35 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

- 36 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);
 - 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.
- 37 The relevant assessment to this Act is f, the best interests assessment. The MCA 2005 and Regulations made under it provide for the selection of a Best Interests Assessor, and this Act deals with the specification of training for Best Interests Assessors.

Territorial extent and application

- 38 Sections 8 and 9 extend and apply to England and Wales.
- 39 Section 10, and paragraphs 2, 4, 5 and 14 of Schedule 1 extend and apply to England, Wales and Scotland
- 40 Part 3 extends and applies to England, Wales, Scotland and Northern Ireland.
- 41 The remainder of the Act's provisions extend to England and Wales and apply to England, with provision that amendment or repeal made by the Act will have the same extent as the enactment which is amended or repealed.
- 42 Section 8 and 9 apply to family law and proceedings which are not within the legislative competence of the National Assembly for Wales. As such no legislative consent motion is necessary.
- 43 Section 9 also applies to the operation of adoption agencies in Wales. This part of the section does fall within the legislative competence of the National Assembly for Wales. A legislative consent motion was sought and granted.
- 44 The provision made by paragraphs 2, 4, 5 and 14 of Schedule 1, introduced by section 10 are within the legislative competence of the Scottish Government. A legislative consent motion was sought and granted. Social welfare is also devolved to the Welsh Government, which is, however, unable to legislate so as to affect Scottish law, hence no legislative consent motion was sought or obtained from the Welsh Government.
- 45 Section 32 amends employment law in England Wales and Scotland. These are reserved matters in Scotland and not transferred in Wales and thus not within the legislative competence of the devolved Governments.
- 46 Save for sections 8, 9, and 32, and subject to paragraph 45 above, the matters to which the provisions of the Act relate are within the legislative competence of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.

Commentary on provisions of Act

Part 1: Children

Chapter 1: Looked after children

Section 1: Corporate parenting principles

- 47 This Section introduces seven key needs (collectively known as corporate parenting principles) which local authorities in England must have regard to whenever they exercise a function in relation to looked after children, relevant children and former relevant children (otherwise known as looked after children and care leavers). Subsection (2) defines these children by reference to the definitions used in sections 22(1), 23A(2) and 23C(1) of the Children Act 1989. The principles are applicable to all local authorities in England, whether or not they are (or were) the local authority responsible for the looked after the child or the care leaver.
- 48 The first principle requires a local authority to have regard to the need to act in the best interests of, and to promote the physical and mental health and well-being of the children and young people to whom the section applies.
- 49 The second principle requires a local authority to have regard to the need to encourage the children and young people to whom the section applies to express their views, wishes and feelings.
- 50 The third principle requires local authorities to have regard to the need to take account of the views, wishes and feelings of children and young people to whom the section applies.
- 51 The fourth principle requires a local authority to have regard to the need to help the children and young people to whom the section applies to gain access to and get the best use of the services provided by the local authority, and by its relevant partners, as defined by section 10(4) of the Children Act 2004.
- 52 The fifth principle requires the local authority to have regard to the need to promote high aspirations for the relevant children and young people to whom the section applies, and to have regard to the need to secure the best outcomes for such children and young persons.
- 53 The sixth principle requires the local authority to have regard to the need for the children and young people to whom the section applies to be safe and for stability in their home lives, relationships and education or work.
- 54 The seventh principle requires a local authority to have regard to the need to prepare the children and young people to whom the section applies for adulthood and independent living.
- 55 Subsection (3) defines the terms ‘local authority’ and ‘relevant partner’.
- 56 Subsection (4) of the section 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 set out in this section.

Section 2: Local offer for care leavers

- 57 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, that may assist care leavers in or in preparing for adulthood and independent living.

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- 58 Subsection (2) sets out certain service areas as being the kinds of services that may assist care leavers in, or in preparing for adulthood and independent living. These are: health and well-being; education and training; employment; accommodation; participation in society; and relationships.
- 59 Subsection (3) confirms that the local offer for care leavers encompasses services offered by others which the local authority would have had the power to offer itself.
- 60 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 update it from time to time. Before publishing its local offer, or any updated 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, about which local authority services may assist care leavers in, or in preparing for, adulthood and independent living.
- 61 Subsection (7) defines "care leavers" by reference to the Children Act 1989 definitions 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.

Section 3: Advice and support on request

- 62 This section extends existing 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) aged between 21 to 25 years and who have informed the local authority that they are pursuing or wish to pursue a course of education or training.
- 63 This section inserts a new section 23CZB into the Children Act 1989. which imposes a new set of duties on a local authority where a former relevant child requests advice and support, regardless of whether that young person 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 requests help 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.
- 64 Subsection (4) of 23CZB requires the 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 to determinewhether any services offered by the authority may help to meet the young person's needs, and what advice and support it would be appropriate for the responsible local authority to provide to help the young person obtain those services.
- 65 Subsection (6) of 23CZB places a duty on the responsible local authority to provide the former relevant child with any advice and support that the assessment identified as appropriate.
- 66 Subsection (7) of 23CZB provides that a local authority must offer to provide a former relevant child with advice and support if they are not already receiving it, as soon as possible after they reach the age of 21, and at least once every 12 months thereafter.
- 67 Subsection (8) of 23CZB defines the term "former relevant child".
- 68 Subsection (3) of section 3 revises wording within section 23CA of the Children Act 1989 (which provides for a personal adviser where a young person is pursuing education and training) so that it is consistent with the wording around provision of a personal adviser within this Act.

- 69 Subsection (4) of section 3 addresses the scenario in which a young person is entitled to a personal adviser under another provision in the Children Act 1989 and/or new section 23CZB. The subsection confirms that a local authority may discharge concurrent duties by appointing a single personal adviser. In addition a duty to appoint or maintain the appointment of a personal adviser under one of the sections in the Children Act 1989, is not affected if the duty has ceased under another section of that Act.
- 70 Subsections (5) to (10) of section 3 make necessary amendments to section 23E of the Children Act 1989 (which describe what pathway plans and assessments of needs involve) as a result of the new duties imposed by this section.

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

- 71 This section adds a new section 23ZZA into the Children Act 1989. Subsections (1) and (2) place a duty on local authorities in England to make advice and information available to those with parental responsibility, designated teachers in maintained schools and academies, and any other person the authority considers appropriate, for the purpose of promoting the educational achievement of relevant children. Subsection (6) defines relevant children as children who are no longer looked after by a local authority as a result of (as defined by the Children Act 1989), an adoption order, a special guardianship order or child arrangements order, and children who appear to the local authority to have been adopted from state care outside England and Wales.
- 72 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.
- 73 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).
- 74 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.

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

- 75 76 This section adds a new section 20A to the Children and Young Persons Act 2008. Subsection (1) places a duty on the governing body of a maintained school in England to designate a member of staff at the school to have responsibility for promoting the educational achievement of certain previously looked after pupils. Under subsection (2), the 'relevant pupils' for whom the designated staff member will have responsibility are those who are no longer looked after as a result of an adoption order, a special guardianship or child arrangements order, and children who appear to the governing body to have been adopted from state care outside England and Wales.
- 76 Subsection (3) gives the Secretary of State the power to make regulations to prescribe the necessary qualifications or experience of the designated member of staff.
- 77 Subsection (4) requires the governing body to have regard to any guidance issued by the Secretary of State.
- 78 Subsection (5) defines "looked after" and subsection (6) defines the meanings of "maintained school" and "registered pupil"

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

- 79 This section 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.
- 80 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.
- 81 '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 as a result of an adoption order, a special guardianship order or child arrangements order, and children who appear to the proprietor to have been adopted from state care outside England and Wales. Subsection (5) confirms that the term "looked after" has the same meaning as it does in the Children Act 1989.

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

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

Section 8: Care orders: permanence provisions

- 83 This section amends the definition of 'permanence provisions' as it appears in section 31 of the Children Act 1989. In addition to considering the matters currently included in section 31(3B) of that Act, the courts will also be required to consider such provisions of the child's care plan that set out: (i) the impact on the child concerned of any harm they have suffered (or were likely to have suffered); (ii) the child's current and future needs (including needs arising from that impact); and (iii) the way in which the long-term plan for the child's upbringing would meet those current and future needs.
- 84 A requirement for local authorities to provide for the matters mentioned in (i) to (iii) above as part of the child's care plan will be set out in the regulations made under section 31A of the Children Act 1989.

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

- 85 This section amends the Adoption and Children Act 2002 so that courts and adoption agencies, when coming to a decision relating to the adoption of a child, always consider the child's relationship with their prospective adopters, if the child has been placed with prospective adopters.

Section 10: Placing children in secure accommodation elsewhere in Great Britain

- 86 This section introduces Schedule 1, which amends legislation to allow local authorities in England and Wales to place children in secure accommodation in Scotland, and clarifies the existing provision for placement by local authorities in Scotland of children in secure accommodation in England and Wales.

Section 11: Chapter 1: consequential amendments

- 87 This section introduces changes to other legislation, consequential on the contents of Chapter 1 of the Act, included in Schedule 2.

Chapter 2: Safeguarding of children

Section 12: Child Safeguarding Practice Review Panel

- 88 This section adds a new section 16A into the Children Act 2004. References to subsections below are to subsections in that new section.
- 89 Subsection (1) imposes a duty on the Secretary of State to establish a Child Safeguarding Practice Review Panel.
- 90 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).
- 91 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.
- 92 Subsection (7) enables the Secretary of State to provide staff, facilities or other assistance to the Panel.
- 93 Subsection (8) gives the Secretary of State the discretion to pay the chair and members of the Panel or to pay expenses.

Section 13: Functions of the Panel

- 94 This section adds a new section 16B into the Children Act 2004. References to subsections below are to subsections in that new section.
- 95 Subsection (1) sets out the functions of the new Child Safeguarding Practice Review Panel. These are, in accordance with regulations made by the Secretary of State:
- a. to identify serious child safeguarding cases in England which raise issues that are complex or of national importance, and
 - b. where it considers appropriate, to arrange for such cases to be reviewed under their supervision.
- 96 Subsection (2) explains that the purpose of these reviews is to identify what improvements should be made by safeguarding partners or others to safeguard and promote the welfare of children.

- 97 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.
- 98 Subsection (4) specifies that the Panel must publish the report, unless they consider it inappropriate to do so.
- 99 Subsection (5) states that if the Panel consider it inappropriate to publish the report, they must publish any information relating to the improvements that should be made following the review that they consider it appropriate to publish.
- 100 Subsection (6) allows the Secretary of State to make regulations about various matters relating to the functions of the Panel. These may include:
- a. the criteria to be taken into account by the Panel in determining whether serious child safeguarding cases raise issues that are complex or of national importance;
 - b. eligibility for appointment as a reviewer;
 - c. the selection process for the appointment as a reviewer;
 - d. the person who is to select a reviewer;
 - e. the supervisory powers of the Panel in relation to a reviewer;
 - f. removal of a reviewer;
 - g. payments of remuneration or expenses to a reviewer by the Secretary of State;
 - h. the procedure for a review;
 - i. the form and content of a report;
 - j. the time when a report is to be provided to the Secretary of State or published.
- 101 Subsection (7) specifies that the Panel must have regard to any guidance given by the Secretary of State in connection with its functions.
- 102 Subsection (8) states that 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.
- 103 Subsection (9) states a 'reviewer' can be one or more persons who are appointed to review a case under the supervision of the Panel. This subsection also defines what is meant by 'safeguarding partners', 'serious child safeguarding cases' and the term 'serious harm'.

Section 14: Events to be notified to the Panel

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

- 105 Subsection (1) requires local authorities in England to notify the Child Safeguarding Practice Review Panel of certain events relating to children which occur in their area. These events relate to circumstances where a local authority in England knows or suspects that a child has been abused or neglected, and the child:
- a. dies or is seriously harmed in the local authority's area, or
 - b. dies or is seriously harmed outside England but while normally resident in the local authority's area.
- 106 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.
- 107 Subsection (3) defines what is meant by 'serious harm' for the purposes of this section.

Section 15: Information

- 108 This section adds a new section 16D into the Children Act 2004. References to subsections below are to subsections in that new section.
- 109 The section sets out the requirement on persons or bodies to supply information to the Child Safeguarding Practice Review Panel on request.
- 110 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.
- 111 Subsection (2) states that a person or body requested to provide information under this section must comply with the request.
- 112 Subsection (3) allows the Panel to apply for a High Court or county court injunction to enforce the request for information, where the recipient of the request does not comply with the request.
- 113 Subsection (4) sets out that the information may be used by the Panel, reviewer or other person or body to whom it is provided, only for the purpose of enabling or assisting the Panel to perform its functions.
- 114 Subsection (5) specifies the meaning of the term 'reviewer' in this section.

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

- 115 This section adds a new section 16E into the Children Act 2004. References to subsections below are to subsections in that new section.
- 116 Subsection (1) requires safeguarding partners for a local authority area to make arrangements for themselves and relevant agencies they consider appropriate to work together in exercising their functions, so far as those functions are exercised for the purpose of safeguarding and promoting the welfare of children in the area.
- 117 Subsection (2) requires those arrangements to include arrangements for safeguarding partners to work together to identify and respond to the needs of children in the area.
- 118 Subsection (3) includes two definitions:
- a. 'relevant agency', in relation to a local authority area in England, is a person who is specified in regulations made by the Secretary of State and who exercises functions in relation to children in the local authority area;

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

Section 17: Local child safeguarding practice reviews

- 119 This section adds a new section 16F into the Children Act 2004. References to subsections below are to subsections in that new section.
- 120 Subsection (1) sets out the requirement on local safeguarding partners to:
- a. identify serious child safeguarding cases which raise issues of importance to the area, and
 - b. where they consider it appropriate, to arrange for those cases to be reviewed under their supervision.
- 121 Subsection (2) explains that the purpose of such reviews is to identify any improvements that should be made by persons in the area to safeguard and promote the welfare of children.
- 122 Subsection (3) specifies the actions the safeguarding partners must take when they arrange for a case to be carried out under their supervision. These are to:
- a. ensure that the reviewer provides a report on the outcome of the review;
 - b. ensure that the reviewer (i) makes satisfactory progress and (ii) that the report is of satisfactory quality;
 - c. provide the report to the Secretary of State and the Child Safeguarding Practice Review Panel.
- 123 Subsection (4) specifies that the safeguarding partners must publish the report, unless they consider it inappropriate to do so.
- 124 Subsection (5) specifies that if the safeguarding partners consider it inappropriate to publish the report, they must publish any information relating to the improvements that should be made following the review that they consider it appropriate to publish.
- 125 Subsection (6) allows the Secretary of State to make regulations about various issues relating to local child safeguarding practice reviews. These may include:
- a. the criteria to be taken into account by the safeguarding partners in determining which serious child safeguarding cases raise issues of importance in relation to the area;
 - b. the appointment or removal of a reviewer by the safeguarding partners, including provision for a reviewer to be appointed by the safeguarding partners from a list provided by the Secretary of State;
 - c. the time when a report should be provided to the Secretary of State or the Child Safeguarding Practice Review Panel, or published;
 - d. the procedure for a review;
 - e. the form and content of a report.
- 126 Subsection (7) specifies the meaning of the term 'reviewer' in this section.

Section 18: Further provision about arrangements

- 127 This section adds a new section 16G into the Children Act 2004. References to subsections below are to subsections in that new section.
- 128 Subsection (1) states that the provisions in section 16G apply to the arrangements set out in sections 16E and 16F.
- 129 Subsection (2) requires the safeguarding partners to publish the arrangements they make under sections 16E and 16F.
- 130 Subsection (3) requires the published arrangements to include provision for scrutiny by an independent person of the effectiveness of the arrangements.
- 131 Subsection (4) requires the safeguarding partners and relevant agencies to act in accordance with the arrangements.
- 132 Subsection (6) enables the Secretary of State to make regulations which provide for enforcement of the duty to act in accordance with the arrangements, if the Secretary of State considers that no other appropriate means of enforcement is appropriate. These regulations may not create criminal offences. Subsection (5) sets out that these regulations apply where a person is specified as a “relevant agency” in regulations made under section 16E(3), inserted by section 16 of this Act.
- 133 Subsection (7) requires the safeguarding partners to prepare and publish, at least once in every 12 month period, a report on the work that they and the relevant agencies for the local authority area have done as a result of the arrangements and how effective the arrangements have been in practice.

Section 19: Information

- 134 This section adds a new section 16H into the Children Act 2004. References to subsections below are to subsections in that new section.
- 135 The section sets out the requirement on persons or bodies to supply information to the safeguarding partners on request.
- 136 Subsection (1) specifies that the safeguarding partners can request that information is supplied to the safeguarding partners, relevant agencies, a reviewer or another person or body specified in the request, for the purpose of enabling or assisting the performance of the functions set out in sections 16E and 16F.
- 137 Subsection (2) states that a person or body requested to provide information under this section must comply with the request.
- 138 Subsection (3) allows the safeguarding partner that made the request for information to apply for a High Court or county court injunction to enforce the request for information where the recipient of the request does not provide comply with the request.
- 139 Subsection (4) sets out that the information may be used by the person to whom it is provided, only for the purpose of enabling or assisting the performance of functions conferred by section 16E or 16F.

Section 20: Funding

- 140 This section adds a new section 16I into the Children Act 2004. References to subsections below are to subsections in that new section.
- 141 Subsection (1) allows the safeguarding partners for a local authority area in England to make payments either directly, or by contributing to a fund from which payments may be

made, towards expenditure incurred in connection with the arrangements made under sections 16E and 16F.

- 142 Subsection (2) allows payments including remuneration, allowances or expenses to be made by the safeguarding partners to a reviewer or independent person.
- 143 Subsection (3) allows the safeguarding partners to provide resources to any person for the purposes connected with the arrangements under section 16E or 16F. These resources may include (but are not limited to) staff, goods, services and accommodation.
- 144 Subsection (4) allows the relevant agencies for a local authority area in England to make payments either directly, or by contributing to a fund from which payments can be made, towards expenditure incurred in connection with arrangements made under section 16E.
- 145 Subsection (5) specifies that the ‘independent person’ in this section means the same as mentioned in section 16G(3).

Section 21: Combining safeguarding partner areas and delegating functions

- 146 This section adds a new section 16J into the Children Act 2004. References to subsections below are to subsections in that new section.
- 147 Subsection (1) enables the safeguarding partners for two or more local authority areas in England to agree that their areas are treated as a single area for the purposes of sections 16E to 16I and subsections (3) to (5) of this section.
- 148 Subsection (2) provides that references in sections 16E to 16I and subsections (3) to (5) of this section to a ‘local authority area’ are to be read in accordance with any such agreement under subsection (1) of this section.
- 149 Subsection (3) provides that where safeguarding partners for two or more local authority areas have agreed their areas are to be treated as a single area for the purposes of sections 16E to 16I and subsections (3) to (5) of this section, those authorities may arrange for one of them to carry out functions under sections 16E to 16I on behalf of the other.
- 150 Subsection (4) allows clinical commissioning groups, where one clinical commissioning group is a safeguarding partner for the same local authority area as another clinical commissioning group, to arrange for one of them to carry out functions under sections 16E to 16I on behalf of the other.
- 151 Subsection (5) allows chief officers of police, where one chief officer is a safeguarding partner for the same local authority area as another chief officer, to arrange for one of them to carry out functions under sections 16E to 16I on behalf of the other.

Section 22: Guidance by the Secretary of State

- 152 This section adds a new section 16K into the Children Act 2004. References to subsections below are to subsections in that new section.
- 153 Subsection (1) specifies that safeguarding partners and relevant agencies for a local authority area in England must have regard to any guidance given by the Secretary of State in connection with functions under sections 16E to 16J.
- 154 Subsection (2) states that guidance given by the Secretary of State in respect of functions conferred by 16F (local child safeguarding practice reviews) may include guidance about circumstances in which it may be appropriate for a serious child safeguarding case to be reviewed and matters to be taken into account in deciding whether a review is making satisfactory progress, or whether a report is of satisfactory quality.

Section 23: Interpretation

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

Section 24: Child death reviews

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

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

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

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

160 Subsection (4) explains that the purpose a review or the analysis is:

- a. to identify any matters relating to the death or deaths generally, that are relevant to the welfare of children in the area or to public health and safety; and
- b. to consider whether it would be appropriate for anyone to take action in relation to any matters identified.

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

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

- a. what they have done as a result of the arrangements under this section; and
- b. how effective the arrangements have been in practice.

Section 25: Information

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

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

- a. the child death review partner or any other child death review partner in the area; or
- b. another person or body.

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

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

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

Section 26: Funding

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

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

- a. making payments directly, or
- b. contributing to a fund out of which payments may be made.

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

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

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

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

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

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

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

Section 28: Guidance and interpretation

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

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

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

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

Section 29: Regulations under provisions inserted by sections 13, 16 and 17

179 This section amends section 66(3) of the Children Act 2004. It provides that regulations under section 16B of the 2004 Act, inserted by section 13 (Functions of the Panel) and under section 16E of the Act, inserted by section 16 (Local arrangements for safeguarding and promoting welfare of children) are to be made by the affirmative procedure. It also enables regulations made under section 16F of the Act, inserted by section 17 (Local child safeguarding practice reviews), to be made by the affirmative procedure, if made alongside regulations made under section 16B.

Section 30: Abolition of Local Safeguarding Children Boards

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

Section 31: Chapter 2: consequential amendments

181 This section introduces changes to other legislation, consequential on the contents of Chapter 2 of the Act, included in Schedule 2.

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

Section 32: Pre-employment protection of whistle-blowers

182 This section amends Part 5A of the Employment Rights 1996 ('the ERA') (section 32(1)) and inserts new whistleblowing arrangements after section 49B (section 31(4)). The new section 49C gives the Secretary of State a power, through Regulations, to prohibit relevant employers (as defined in new section 49C(7)) in England, Scotland and Wales from discriminating against a person who applies for a children's social care position (an "applicant") because it appears to the employer that the applicant has made a protected disclosure (within the meaning given by section 43A of the Employment Rights Act 1996). Sections 49C(2) and 49C(3) respectively define the meaning of 'position' in a contractual context and in terms of the meaning of 'children's social care position'. Discrimination for the purposes of section 49C(1) is defined at section 49C(4). Section 49C(5) sets out what regulations may do and section 49C(6) clarifies that the application of section 236(5) of the ERA is not affected by section 49C(5)(f) regulations making incidental or consequential provision. Section 49C(8) defines local authority in England for these purposes and section 49C(9) defines 'children's social care functions'. Sections 49C(10) and 49C(11) respectively set out that the Secretary of State must consult Welsh and Scottish Ministers before making regulations under this section. Section 49C(12) defines the term 'worker' and the meaning of 'worker of a relevant employer' for the purposes of 49(5)(a).

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

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

185 Sub-sections (5) and (6) are technical insertions in light of the new whistleblowing arrangements inserted by the new section 49C.

Section 33: Power to secure proper performance

186 This section 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.

187 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.

Chapter 4: Relationships, sex and PSHE education

Section 34: Education relating to relationships and sex

188 This section places a duty on the Secretary of State to make regulations that 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 applies in relation to Academy schools and independent schools as well as maintained schools.

189 Subsection (2) sets out matters to be included in the regulations, including the provision of guidance.

190 Subsections (3) and (4) make further provision with respect to content of such regulations and guidance. In particular, subsection (3) specifies that guidance must 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.

191 The subsection (1) duty to make provision by regulations may be discharged by making that provision by regulations under another Act (subsection (7)). Before making the regulations, the Secretary of State is under a duty to consult such persons as the Secretary of State considers appropriate (subsections (5) and (7)).

192 Subsection (6) provides that the regulations may amend any provision (including provision conferring powers) that is made by or under the legislation specified in that subsection.

193 Subsection (8) provides that the provision which could be made under the regulations by virtue of section 67 of the Act may include provision amending, repealing, or revoking any provision made by or under any Act or other instrument or document, whenever passed or made.

194 Subsection (6) lists 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).

Section 35: Other personal, social, health and economic education

- 195 This section 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 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.
- 196 Subsection (2) sets out matters which may be included in the regulations.
- 197 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)).
- 198 Subsection (4) provides that the regulations could amend any provision (including provision conferring powers) that is made by or under the legislation specified in that subsection; and the provision which could be made under the regulations by virtue of section 67 of the Act 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)).
- 199 Subsection (9) would preserve existing powers to make provision for this education.

Part 2: Social workers etc in England

Section 36: Social Work England

- 200 Subsection (1) establishes a body corporate called Social Work England, and subsection (2) determines that Social Work England will be referred to as “the regulator” throughout Part 2 of the Act.
- 201 Subsection (3) signals that further provision about the regulator is made in Schedule 3.
- 202 Subsections (4) and (5) give the Secretary of State the power to make regulations to rename the regulator and allows for such regulations to include consequential amendments in relation to any name change.

Section 37: Over-arching objective

- 203 Subsection (1) of this section sets out that the overarching objective of the regulator in exercising its functions is the protection of the public.
- 204 Subsection (2) states that the pursuit by the regulator of its overarching objective involves the pursuit of three objectives: protecting, promoting and maintaining health, safety and well-being of the public; promoting and maintaining public confidence in social workers in England; and promoting and maintaining proper professional standards for social workers in England.

Section 38: Advisers

- 205 Sub-section (1) of this section enables the Secretary of State, through regulations, to permit or require Social Work England to appoint one or more individuals or panels of individuals to advise it on matters relating to its functions and to make provision in regulations regarding the functions of those so appointed.

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

Section 39: Registration

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

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

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

Section 40: Restrictions on Practice and Protected Titles

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

Section 41: Professional Standards

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

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

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

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

215 Subsection (5) provides that if the Secretary of State has made regulations relating to approved mental health professionals, under the regulation making power under section 48(1) described below, and has, therefore, amended section 114ZA of the Mental Health Act 1983, the reference in subsection (1) to professional standards for social workers in England includes professional standards relating to their work as approved mental health professionals.

Section 42: Improvement Standards

- 216 Subsection (1) of this section allows the Secretary of State to determine and publish improvement standards for social workers in England. The Secretary of State is also able to carry out assessments of whether people meet these improvement standards. There is a power under subsection (2) for the Secretary of State to arrange for another person to do any or all of these things.
- 217 Subsection (3) requires the Secretary of State to consult with such persons as the Secretary of State considers appropriate before determining any improvement standards.
- 218 Subsection (4) explains that an improvement standard is a professional standard the attainment of which demonstrates particular expertise or specialisation.
- 219 Nothing in this section limits anything in section 41 (professional standards) (subsection (5)).

Section 43: Education and Training

- 220 Subsection (1) of this section requires the regulator, in relation to people who are or who wish to become social workers in England, to determine and publish standards of education or training.
- 221 Subsection (2) requires the regulator to consult with such persons it considers appropriate and obtain the Secretary of State's approval for the standard being set, before determining standards under this section.
- 222 Subsections (3) and (4) enable the Secretary of State, by regulations, to make provision for the regulator to operate an approval scheme for: (a) courses of education or training for people who are or wish to become social workers in England; (b) qualifications for people who are or who wish to become social workers in England, and to make provision in connection with this scheme
- 223 Subsection (5) provides a list of the matters that regulations, made by the Secretary of State under subsection (3) and (4), may make provision for.
- 224 Subsection (6) relates to the appointment of people to carry out inspections under the approval scheme referred to at subsection (5) and allows regulations to make provisions for payments, staff, facilities or other assistance in respect of these people.

Section 44: Discipline and Fitness to Practise

- 225 Subsection (1) requires the regulator to make arrangements for protecting the public from social workers in England whose fitness to practise is impaired and to make arrangements for taking other disciplinary action against social workers in England.
- 226 Subsection (2) allows the Secretary of State to make regulations to require the regulator to make arrangement for taking disciplinary action against registered students. Subsection (3) enables the Secretary of State, by regulations, to make further provision about fitness to practise as a social worker in England, and discipline of social workers in England and registered students, and about the arrangements referred to at subsections (1) or (2).
- 227 Subsections (4) provides a list of the matters that regulations, made by the Secretary of State under subsection (3), may address including, for example, the circumstances in which a person's fitness to practise is impaired or disciplinary action may be taken; the appointment of assessors, examiners or legal or other advisers; and temporary measures that may be taken against a person pending the outcome of an investigation. Subsection (5) relates to the appointment of people to carry out functions in relation to fitness to practise

or discipline and allows for provisions that may be made about persons appointed under the regulations to include provision about payments, staff, facilities or other assistance in respect of these people.

Section 45: Offences

228 This section allows the Secretary of State, by regulations, to create offences in connection with registration in a register mentioned in section 39; prohibitions or restrictions imposed under section 40; failing to comply with a requirement to provide documents or other information or to attend and give evidence under regulations under sections 39 or 44; or providing false or misleading information or evidence in response to a requirement under regulations under sections 39 or 44.

229 The regulations under this section must provide for the offence to be triable on a summary basis only and the regulations may not provide for the offences to be punishable with imprisonment.

Section 46: Ensuring adequate provision of social work training

230 This section 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.

231 Subsection (1) provides 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.

232 Subsection (2) allows 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.

233 Subsection (3) provides for functions of the Secretary of State under this section to be exercised by any person, or by employees of any person, authorised to do so by the Secretary of State.

234 Subsection (4) provides 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.

235 Subsection (5) defines "social work training" for the purposes of this section.

Section 47: Exercise by Special Health Authority of functions under section 46(1)(b)

236 This section is based on powers under section 67A of the Care Standards Act 2000.

237 Subsection (1) provides power to the Secretary of State to direct a Special Health Authority to exercise functions under section 46(1)(b) so far as relating to the provision of financial or other assistance.

238 Subsection (2) provides for the National Health Service Act 2006 to have effect as if (a) any direction under subsection (1) 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.

239 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.

Section 48: Approval of courses for approved mental health professionals

- 240 This section allows the Secretary of State, through regulations, to amend section 114ZA of the Mental Health Act 1983, which deals with the approval of courses for approved mental health professionals in England. Section 114ZA currently provides that the Health and Care Professions Council may approve courses for persons who are, or wish to become, approved to act as an Approved Mental Health Professional by a local authority in England, and requires the Health and Care Professions Council to publish a list of approved courses, and a list of courses that are no longer approved.
- 241 Subsection (1) allows regulations made under this section to amend section 114ZA to transfer the functions of the Health and Care Professions Council set out in that section to Social Work England and to give Social Work England the power to charge fees for approving courses under that section.
- 242 Subsection (2) allows regulations made under sub-section (1) to include further provision in connection with the approval of courses or the charging of fees under that section.
- 243 Subsection (3) provides a list of the matters, by way of example, that regulations, made by the Secretary of State under subsection (1), may address with regards to the approval of courses for approved mental health professionals.
- 244 Subsection (4) enables regulations to make provision for payments, staff, facilities or other assistance in respect of inspectors that may be appointed under regulations for the purposes of approval of courses.
- 245 Subsection (5) provides that if regulations made under this section give Social Work England the power to charge fees for the approval of courses, section 50(2) – (7) (Fees) is also to apply for the purposes of this section.

Section 49: Approval of courses for best interests assessors

- 246 This section amends Paragraph 130 of Schedule A1 to the Mental Capacity Act 2005 to allow training in connection with best interest assessments to be specified by Social Work England or the Secretary of State.
- 247 The amendment to Paragraph 130 will allow regulations made under Paragraph 129 of the Mental Capacity Act 2005, in relation to a person's training in connection with best interest assessments, to include provision for particular training to be specified by Social Work England or the Secretary of State, otherwise than in the regulations. The regulations may also give Social Work England the power to charge a fee for specifying training, and if regulations do give a power to charge a fee, section 50(2) – (7) (Fees) is also to apply for the purposes of this section.

Section 50: Fees

- 248 Subsection (1) allows the Secretary of State, through regulations, to confer power on the regulator to charge fees in connection with: registration or continued registration in a register as mentioned in section 39; assessing whether a person meets a professional standard relating to proficiency as mentioned in section 41(4); approval or continued approval of an education or training course or qualification in accordance with a scheme mentioned in section 43.
- 249 Subsections (2) and (3) require the regulator to set the level of the fees in accordance with any provisions in the regulations; and to consult any persons it considers appropriate and to obtain the approval of the Secretary of State before determining the level of any fee.

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

251 Subsection (6) allows for regulations under this section to include provision about the collection and recovery of fees. Under subsection (7) regulations must require the regulator to pay any fee income to the Secretary of State unless the Secretary of State (with consent of the Treasury) directs otherwise.

Section 51: Grants

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

Section 52: Information and advice

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

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

Section 53: Duty to co-operate

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

Section 54: Information for Secretary of State

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

Section 55: Default powers

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

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

Section 56: Oversight by the Professional Standards Authority for Health and Social Care

259 This section makes provision for the Professional Standards Authority for Health and Social Care (the ‘PSA’) to oversee Social Work England by making amendments to existing legislation as set out in Schedule 4.

Section 57: Conferral of functions and sub-delegation

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

- 261 Subsection (3) enables regulations made under Part 2 to (a) confer power on the regulator to make rules and (b) make provision in relation to the procedure for making rules. This could include a requirement, in regulations, for the regulator to obtain the Secretary of State's approval before making rules of a specified description.
- 262 Subsection (4) allows for provision that may be made in regulations under Part 2 under by virtue of section 67 to include provision amending, repealing or revoking any provision made by or under an Act or other instrument or documents, whenever passed or made.

Section 58: Consultation

- 263 Subsection (1) of this section requires the Secretary of State to carry out a public consultation in advance of making regulations under Part 2. Subsection (2) requires that, where the Secretary of State lays a draft of regulations (under this Part) before Parliament, it must be accompanied by a report (by the Secretary of State) about the consultation.
- 264 These requirements do not apply in two circumstances: with regards to regulations renaming Social Work England (section 36); and, if regulations amend other regulations and, in the opinion of the Secretary of State, do not make any substantial change.

Section 59: Parliamentary procedure for regulations under Part 2

- 265 Regulations made under section 36 are to be subject to the negative resolution procedure, but any other regulations under Part 2 are to be subject to the affirmative resolution procedure.

Section 60: Transfer Scheme

- 266 Subsection (1) provides power for the Secretary of State to make a scheme to transfer property, rights and liabilities from the Health and Care Professions Council (referred to as the 'old regulator') to Social Work England. This is called a 'transfer scheme'.
- 267 Subsection (2) provides that the things that may be transferred under a transfer scheme include: (a) property, rights and liabilities that could not be transferred without the transfer scheme (b) property acquired and rights and liabilities arising after the scheme is made.
- 268 Subsection (3) enables a transfer scheme to make consequential, supplementary, incidental or transitional provision and allows for the transfer scheme to provide for other things as listed.
- 269 Subsection (4) allows a transfer scheme under this section to provide for modification to be made by agreement and for these modifications to have effect from the date the original scheme came into effect.
- 270 Subsection (5) explains the meaning of "TUPE regulations" as used in subsection (3)(f) of this section and subsection (6) clarifies that references in this section to (a) rights and liabilities include rights and liabilities relating to a contract of employment and (b) transfer of property include the grant of a lease

Section 61: Repeal of existing powers to regulate social workers

- 271 This section makes provision regarding the repeal of existing powers in the Health Act 1999 to regulate social workers.

Section 62: Amendments to do with this Part

- 272 This section introduces schedule 5 of the Act which consists of minor and consequential amendments relating to Part 2.

Section 63: Interpretation of Part 2

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

Section 64: Review by independent person

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

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

276 Sub-sections (3) and (4) require the Secretary of State, on receiving the report, to lay it and a response before Parliament.

277 Sub-section (5) specifies that the review period is five years beginning with the day on which section 39(1) comes fully into force.

Part 3: General

Section 65: Power to make transitional provision

278 This section allows the Secretary of State to make transitional etc. provision in connection with the commencement of any provisions of the Act.

Section 66: Power to make consequential provision

279 This section 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 Act. 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.

Section 67: Regulations: general

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

Section 68: Affirmative and negative resolution procedures

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

Section 69: Extent

282 Subsection (1) provides that section 10 and paragraphs 2, 4, 5 and 14 of Schedule 1 extend to England, Wales and Scotland. Subsection (4) provides that Part 3 of the Act extends to England, Wales, Scotland and Northern Ireland. Subsection (2) provides that an amendment or repeal made by the Act will have the same extent as the enactment which is amended or repealed. Apart from those matters, Subsection (3) provides that the other sections of the Act extend to England and Wales only.

Section 70: Commencement

283 This section provides that Section 10, Schedule 1 and Part 3 of the Act come into force on the day on which it is passed, and that the other provisions of the Act will come into force on such day or days as the Secretary of State may specify in regulations. Subsection (3) allows the Secretary of State to commence individual provisions on different days for different purposes.

Section 71: Short title

284 This section confirms the short title of the Act

Schedules

Schedule 1: Placing children in secure accommodation elsewhere in Great Britain

285 This schedule makes various amendments to legislation in relation to the placing of children in secure accommodation in Great Britain.

286 It amends 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 also provides for the enforcement of secure accommodation orders made by the courts of England and Wales in Scotland as it provides authority for secure units in Scotland to restrict liberty under those orders.

287 The schedule makes consequential amendments to the Children (Secure Accommodation) Regulations 1991 which now extend to Scotland in part. The amendments extend to Scotland those provisions of the 1991 Regulations that relate to the maximum periods for which a child can be placed and kept in secure accommodation by English local authorities initially, and for which a local authority may thereafter be authorised to place a child by the courts.

288 The schedule also makes consequential amendments to the Secure Accommodation (Scotland) Regulations 2013. It disapplies 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 is also made to regulation 15 of the 2013 Regulations to ensure that the Secretary of State or Welsh Ministers are entitled to relevant records relating to children placed in Scotland on request.

289 The schedule lastly makes clarificatory amendments to the Children's Hearings Scotland Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 in order to make clear the basis on which local authorities in Scotland may place children in secure accommodation in England and Wales.

Schedule 2: Part 1 of this Act: consequential amendments

- 290 Paragraph 1 amends Schedule 1 to the Local Authority Social Services Act 1970 to include section 2 (local offer for care leavers) within the definition of ‘social services functions’ which is specified in that Act. Paragraphs 2 to 4 make further consequential amendments arising out of the new local offer requirement.
- 291 Paragraph 5 adds section 23CZB of the Children Act 1989 (inserted by section 3 (advice and support) of this Act), to the list contained in Schedule 3 to Nationality, Immigration and Asylum Act 2002 (kinds of support for which certain people are ineligible).
- 292 Paragraph 6 extends the apprenticeship offer contained in section 83A of the Apprenticeships, Skills, Children and Learning Act 2009 to persons covered by section 3 (advice and support).
- 293 Paragraph 7 amends the Local Authority Social Services Act 1970 to provide that the new local safeguarding and child death review arrangements are included in the definition of ‘social services functions’ which is specified in that Act.
- 294 Paragraph 8 amends section 83 of the Children Act 1989, which concerns research and returns of information. In section 83(1), which covers powers of the Secretary of State to conduct or assist in conducting research, Local Safeguarding Children Boards are replaced by the Child Safeguarding Practice Review Panel, safeguarding partners and child death review partners. Further superseded references to Local Safeguarding Children Boards are also removed by this paragraph.
- 295 Paragraph 9 amends section 31 of the Children and Young Persons Act 2008, which concerns the supply of information concerning deaths of children. As a consequence of the new arrangements for child death reviews, it is necessary to make new provisions for the registrar of births and deaths in England to supply information of the deaths of all deceased under the age of 18 to the child death review partners. ‘Appropriate Boards’ are replaced by ‘appropriate bodies’ and arrangements for the supply of information concerning deaths of children in England are separated from the arrangements for the supply of information concerning deaths of children in Wales. This paragraph also defines child death review partners, and the definition of ‘Local Safeguarding Children Board in England’ is removed.

Schedule 3: Social Work England

- 296 This schedule includes provisions relating to the governance of the regulator including powers to appoint members and staff, powers for the regulator to delegate functions and requirements as to annual reports and accounts. Specifically the schedule provides for the following:
- a. that the regulator is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown and that members and staff of the regulator are not to be regarded as Crown servants;
 - b. that the regulator is to consist of a Chair appointed by the Secretary of State and such other members as the Secretary of State may appoint;
 - c. the details about terms of office, remuneration and pensions of members;
 - d. that the regulator must appoint a chief executive who must be approved by the Secretary of State and who is to be an employee of the regulator. The Secretary of State may appoint the first chief executive;

- e. that the regulator may appoint other staff on such terms, including in relation to remuneration and pension arrangements, as the regulator may decide (but the regulator must obtain Secretary of State approval for any terms relating to remuneration or pension arrangements);
- f. that the regulator may determine its own procedure including quorum and that no proceeding is invalidated by a vacancy in the office of chair or a defect in the appointment of any member;
- g. that the regulator may delegate functions to members, members of staff or committees and that it may delegate functions to any other person if it considers that the delegation is likely to lead to an improvement in the exercise of its functions and the person has agreed to the delegation (but the functions that may be so delegated do not include any power or duty to make rules or the powers of delegation so conferred). The responsibility for the exercise of the function will remain with the regulator;
- h. that committees or sub-committees of the regulator may include persons who are not members of the regulator;
- i. that the regulator must send the Secretary of State a report on the exercise of its functions during the year as soon as possible after the end of each financial year. It must prepare a statement of accounts for each financial year which must be in such form as the Secretary of State may direct and the regulator must send a copy of this statement to the Secretary of State and the Comptroller and Auditor General, within the time period directed by the Secretary of State. The Comptroller and Auditor General must examine, certify and report on the statement of accounts and send a copy of the certified statement and of the report to the Secretary of State as soon as possible. The Secretary of State must, in respect of each financial year, lay before Parliament a document consisting of the annual report provided to the Secretary of State by the regulator and the certified statement of accounts and report sent by the Comptroller and Auditor General;
- j. that the application of the regulator's seal must be authenticated by the signature of a member of the regulator or an authorised person. A document purporting to be duly executed under the seal of the regulator is to be received in evidence and is to be treated as so executed unless the contrary is shown;
- k. that all members of the regulator will be disqualified from membership of the House of Commons (through insertion of a reference to Social Work England into Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 at the appropriate place); and
- l. that the regulator will be a public authority for the purposes of the Freedom of Information Act 2000 (through insertion of a reference to Social Work England into Part 6 of Schedule 1 to that Act at the appropriate place).

Schedule 4: Oversight by the Professional Standards Authority for Health and Social Care

297 Schedule 4 provides for the National Health Service Reform and Health Care Professions Act 2002 ('the 2002 Act') to be amended to give the Professional Standards Authority for Health and Social Care ('the PSA') functions in respect of Social Work England, as the PSA has for other health and social care regulators. The amendments to the 2002 Act are as follows:

- a. Paragraph 2 adds Social Work England to the list of regulatory bodies under section 25(3) of the 2002 Act. The PSA has general functions listed under section 25(2) of the 2002 Act. By virtue of Social Work England being made a 'regulatory body' under section 25(3), these general functions will now apply with regards to Social Work England, as will other functions provided for in Part 2 of the 2002 Act, other than those which are specifically excluded further to amendments made under this Schedule.
- b. Paragraph 2 also amends subsections (3A) and (3B) of section 25 of the 2002 Act. These provisions were inserted into the 2002 Act by section 220 of the Health and Social Care Act 2012 as part of a number of amendments to various Acts to exclude social workers and social care workers in England from the definition of 'registered health care professional' and similar terms. This was in order to avoid the unintended consequence of social workers and social care workers in England falling within such definitions by virtue of them falling to be regulated by the HCPC. The amendments in paragraph 2 seek to maintain this position; to ensure that references in legislation to a regulatory body mentioned in section 25(3) of the 2002 Act do not generally include a reference to Social Work England or a reference to the HCPC or a regulatory body within section 25(3)(j) so far as it has functions relating to social care workers in England.
- c. Paragraph 3 amends section 25A of the 2002 Act, which requires the Privy Council, by regulations, to require each regulatory body listed in section 25(3) of the 2002 Act to pay the PSA periodic fees of such amount as the Privy Council determines in respect of such of the PSA's functions in relation to that body as are specified in the regulations. Paragraph 3 excludes Social Work England from the regulatory bodies to be captured by these regulations. Paragraph 3 also amends the heading of section 25A to specify that section 25A concerns 'funding of the Authority by bodies other than Social Work England'.
- d. Paragraph 4 provides for new section 25AA to be inserted into the 2002 Act, after section 25A. New section 25AA will require the Secretary of State, by regulations, to require Social Work England to pay the PSA periodic fees, of such amount as determined by the Secretary of State, in respect of such of the PSA's functions in relation to Social Work England as are specified in the regulations. The functions referred to do not include the PSA's functions under Section 26A of the 2002 Act. Section 25AA requires that the regulations must provide for the method of determining the amount of a fee under the regulations and sets out further details regarding the fee setting process
- e. Paragraph 5 excludes Social Work England from section 25C of the 2002 Act, which provides, amongst other things, for the PSA to assist the Privy Council in the appointment of members of a regulatory body. As the Privy Council has no role in Social Work England, it is not necessary for this function to apply to Social Work England.

- f. Paragraphs 6 to 8 make amendments to sections 25D to 25F of the 2002 Act, which allow regulatory bodies to hold certain voluntary registers and require those bodies establishing such voluntary registers to make impact assessments and consult before doing so. It is not intended that Social Work England should hold voluntary registers. The amendments at paragraphs 6 to 8 serve to exclude Social Work England from these provisions and to make consequential amendments in relation to this.
- g. Paragraphs 9 to 11 make amendments to sections 25G to 25I of the 2002 Act, which provide for the PSA to accredit voluntary registers held by regulatory bodies and for the PSA to make an impact assessment and consult before accrediting such registers. As is not intended that Social Work England should hold voluntary registers, this function is not applicable and these paragraphs make the necessary amendments to exclude Social Work England from this function.
- h. Paragraph 12 amends section 26A(1D) and (1E) of the 2002 Act. Under subsection (1C) of this provision, the Welsh Ministers, the Scottish Ministers or the relevant Northern Ireland department may request the PSA for advice on any matter connected with accreditation of registers under section 25G other than accreditation of registers referred to in subsection (1D). Paragraph 12(2) omits paragraph (b) from subsection (1D), since the reference to voluntary registers for those who are or have been participating in studies for the purpose of becoming a member of the social work profession in England in section 25G is omitted by the amendment made under paragraph 6(3) of this schedule. Paragraph 12(3) makes an amendment to subsection (1E) as a consequence of the amendment to subsection (1D).
- i. Paragraph 13 excludes Social Work England from the PSA's power under section 27(2) of the 2002 Act to direct a regulatory body to make rules. As Social Work England is a non-departmental public body for which the Secretary of State is accountable to Parliament, it would not be appropriate for the PSA to have this power of direction. This does not prevent the PSA making recommendations to the Secretary of State regarding Social Work England under its other powers.
- j. Paragraph 14 amends section 28(1) of the 2002 Act. The Privy Council may make provision in regulations, by virtue of section 28(1), about the investigation by the PSA of complaints made to it about the way in which a regulatory body has exercised any of its functions. Paragraph 14 excludes Social Work England from the regulatory bodies referred to in section 28(1) of the 2002 Act such that the Privy Council may not make regulations about the investigation by the PSA of complaints made to it about the way in which Social Work England has exercised its functions.
- k. Paragraph 15 adds new subsection 2A to section 29 of the 2002 Act. Under section 29, the PSA has the power to refer a case, where a relevant decision is made, to the relevant court, if it considers that the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public. Sections 29(1) and (2) set out what section 29 applies to and section 29(3) states that the things to which section 29 applies are 'relevant decisions'. New subsection 2A indicates that section 29 is also to apply to any steps or decisions which are taken by Social Work England (or any of its committees or officers) in connection with fitness to practise or discipline and which are of a description specified in regulations made by the Secretary of State – these will be 'relevant decisions'. This amendment extends the PSA's function of referring cases to the relevant court, where the relevant decision is considered not sufficient for public protection, to apply to relevant decisions made by Social Work England, as provided

for under new subsection (2A). Paragraph 15 also clarifies that the relevant court in relation to a relevant decision as a result of subsection (2A) means the High Court of Justice in England and Wales.

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

Schedule 5: Amendments to do with Part 2

298 Section 61 of the Act already makes provision regarding the repeal of existing powers (in section 60, section 60A and schedule 3 of the Health Act 1999) to regulate social workers. Paragraphs 10 - 27 of this schedule 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 changes the title of the Health and Social Work Professions Order 2001 to the Health Professions Order 2001. Paragraphs 46 to 48 make consequential changes to the legislation referred to in those paragraphs as a result.

299 As existing provisions relating to the regulation of social workers in the Health Act 1999 and the Health and Social Work Professions Order 2001 are to be repealed, consequential amendments are made by this schedule to various provisions of primary legislation, to reflect the transition that will occur from the current regulator to the new regulator. In some cases, reference to the new regulator and the new regulatory regime/new legislative framework are 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 make such amendments. In other cases, amendments reflect that the current regulator will no longer regulate social workers (but retain the position for social workers under the relevant legislation) - paragraphs 2, 3, 5, 6, 30, 31 and 36 make such amendments.

300 Paragraphs 7 to 9 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. Section 46 of this Act is intended to replace the Secretary of State's powers under section 67 of the Care Standards Act 2000 in respect of social workers.

301 Paragraph 38 of this schedule repeals provisions of the Health and Social Care Act 2012 that amended legislation in 2012, as those amendments themselves will now be repealed by the amendments in this schedule.

302 Paragraphs 28 and 37 of this 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 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.

Commencement

303 Section 10, Schedule 1 and Part 3 of the Act come into force on the day on which it is passed. The remaining provisions of this Act come into force through commencement regulations to be made by the Secretary of State.

Related documents

304 The following documents are relevant to the Act and can be read at the stated locations:

- Putting children first: our vision for children's social care
<https://www.gov.uk/government/publications/putting-children-first-our-vision-for-childrens-social-care>
- Children's social care reform: a vision for change
<https://www.gov.uk/government/publications/childrens-social-care-reform-a-vision-for-change>
- Keep on caring: supporting young people from care to independence
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/535899/Care-Leaver-Strategy.pdf
- Adoption: a vision for change
<https://www.gov.uk/government/publications/adoption-a-vision-for-change>
- Children's social care innovation programme
<https://www.gov.uk/government/publications/childrens-social-care-innovation-programme>
- Policy statement: Relationships Education, Relationships and Sex Education, and Personal, Social, Health and Economic Education
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/595828/170301_Policy_statement_PSHEv2.pdf

Annex A - Hansard References

305 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

| Stage | Date | Hansard Reference |
|---|------------------|---|
| <i>House of Lords</i> | | |
| Introduction | 19 May 2016 | Vol. 773 Col. 27 |
| Second Reading | 14 June 2016 | Vol. 773 Col. 1111 |
| Grand Committee | 29 June 2016 | Vol. 773 Col. 25 |
| Grand Committee | 4 July 2016 | Vol. 773 Col. 93 |
| Grand Committee | 6 July 2016 | Vol. 773 Col. 199 |
| Grand Committee | 11 July 2016 | Vol. 774 Col. 1 |
| Grand Committee | 13 July 2016 | Vol. 774 Col. 115 |
| Report | 18 October 2016 | Vol. 774 Col. 2230 |
| Report | 8 November 2016 | Vol. 776 Col. 1036 |
| Third Reading | 23 November 2016 | Vol. 776 Col. 1940 |
| <i>House of Commons</i> | | |
| Introduction | 24 November 2016 | N/A |
| Second Reading | 5 December 2016 | Vol. 618 Col. 36 |
| Public Bill Committee | 13 December 2016 | Col. 1 |
| Public Bill Committee | 13 December 2016 | Col. 37 |
| Public Bill Committee | 15 December 2016 | Col. 71 |
| Public Bill Committee | 15 December 2016 | Col. 101 |
| Public Bill Committee | 10 January 2017 | Col. 129 |
| Public Bill Committee | 10 January 2017 | Col. 161 |
| Public Bill Committee | 12 January 2017 | Col. 213 |
| Public Bill Committee | 12 January 2017 | Col. 245 |
| Report and Third Reading | 7 March 2017 | Vol. 622 Col. 694 |
| Lords Consideration of Commons Amendments | 4 April 2017 | Vol. 782 Col. 950 |
| Royal Assent | 27/04/2017 | House of Commons Vol. 624 Col. 1230 |
| | | House of Lords Vol. 782 Col. 1528 |

These Explanatory Notes relate to the Children and Social Work Act 2017 (c. 16) which received Royal Assent on 27 April 2017

Annex B - Progress of Bill Table

306 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

| Section of the Act | Bill as Introduced in the Lords | Bill as amended in Committee in the Lords | Bill as amended on Report in the Lords | Bill as introduced in the Commons | Bill as amended in Committee in the Commons |
|--------------------|---------------------------------|---|--|-----------------------------------|---|
| Section 1 | Clause 1 | Clause 1 | Clause 1 | Clause 1 | Clause 1 |
| Section 2 | Clause 2 | Clause 2 | Clause 2 | Clause 2 | Clause 2 |
| Section 3 | Clause 3 | Clause 3 | Clause 3 | Clause 3 | Clause 3 |
| Section 4 | Clause 4 | Clause 4 | Clause 4 | Clause 4 | Clause 4 |
| Section 5 | Clause 5 | Clause 5 | Clause 5 | Clause 5 | Clause 5 |
| Section 6 | Clause 6 | Clause 6 | Clause 6 | Clause 6 | Clause 6 |
| Section 7 | Clause 7 | Clause 7 | Clause 7 | Clause 7 | Clause 7 |
| Section 8 | Clause 8 | Clause 8 | Clause 8 | Clause 8 | Clause 8 |
| Section 9 | Clause 9 | Clause 9 | Clause 9 | Clause 9 | Clause 9 |
| Section 10 | | | | | Clause 10 |
| Section 11 | | | | Clause 10 | Clause 11 |
| Section 12 | Clause 11 | Clause 11 | Clause 11 | Clause 12 | Clause 12 |
| Section 13 | Clause 12 | Clause 12 | Clause 12 | Clause 13 | Clause 13 |
| Section 14 | Clause 13 | Clause 13 | Clause 13 | Clause 14 | Clause 14 |
| Section 15 | Clause 14 | Clause 14 | Clause 14 | Clause 15 | Clause 15 |
| Section 16 | | Clause 15 | Clause 15 | Clause 16 | Clause 16 |
| Section 17 | | Clause 16 | Clause 16 | Clause 17 | Clause 17 |
| Section 18 | | Clause 17 | Clause 17 | Clause 18 | Clause 18 |
| Section 19 | | Clause 18 | Clause 18 | Clause 19 | Clause 19 |
| Section 20 | | Clause 19 | Clause 19 | Clause 20 | Clause 20 |
| Section 21 | | Clause 20 | Clause 20 | Clause 21 | Clause 21 |
| Section 22 | | Clause 21 | Clause 21 | Clause 22 | Clause 22 |
| Section 23 | | Clause 22 | Clause 22 | Clause 23 | Clause 23 |
| Section 24 | | Clause 23 | Clause 23 | Clause 24 | Clause 24 |
| Section 25 | | Clause 24 | Clause 24 | Clause 25 | Clause 25 |
| Section 26 | | Clause 25 | Clause 25 | Clause 26 | Clause 26 |
| Section 27 | | Clause 26 | Clause 26 | Clause 27 | Clause 27 |
| Section 28 | | Clause 27 | Clause 27 | Clause 28 | Clause 28 |
| Section 29 | | | | Clause 29 | Clause 29 |
| Section 30 | | Clause 28 | Clause 28 | Clause 30 | Clause 30 |
| Section 31 | | | | Clause 32 | Clause 31 |

These Explanatory Notes relate to the Children and Social Work Act 2017 (c. 16) which received Royal Assent on 27 April 2017

| Section of the Act | Bill as Introduced in the Lords | Bill as amended in Committee in the Lords | Bill as amended on Report in the Lords | Bill as introduced in the Commons | Bill as amended in Committee in the Commons |
|---------------------------|--|--|---|--|--|
| Section 32 | | | Clause 29 | Clause 31 | Clause 40 |
| Section 33 | Clause 10 | Clause 10 | Clause 10 | Clause 11 | Clause 41 |
| Section 34 | | | | | |
| Section 35 | | | | | |
| Section 36 | | | Clause 30 | Clause 33 | Clause 42 |
| Section 37 | | | Clause 31 | Clause 34 | Clause 43 |
| Section 38 | Clause 27 | Clause 41 | Clause 32 | Clause 35 | Clause 44 |
| Section 39 | Clause 22 | Clause 36 | Clause 33 | Clause 36 | Clause 45 |
| Section 40 | Clause 23 | Clause 37 | Clause 34 | Clause 37 | Clause 46 |
| Section 41 | Clause 24 | Clause 38 | Clause 35 | Clause 38 | Clause 47 |
| Section 42 | | | | | Clause 48 |
| Section 43 | Clause 25 | Clause 39 | Clause 36 | Clause 39 | Clause 49 |
| Section 44 | Clause 26 | Clause 40 | Clause 37 | Clause 40 | Clause 50 |
| Section 45 | Clause 34 | Clause 48 | Clause 38 | Clause 41 | Clause 51 |
| Section 46 | | | | | |
| Section 47 | | | | | |
| Section 48 | Clause 39 | Clause 53 | Clause 39 | Clause 42 | Clause 52 |
| Section 49 | Clause 40 | Clause 54 | Clause 40 | Clause 43 | Clause 53 |
| Section 50 | Clause 32 | Clause 46 | Clause 41 | Clause 44 | Clause 54 |
| Section 51 | Clause 33 | Clause 47 | Clause 42 | Clause 45 | Clause 55 |
| Section 52 | Clause 29 | Clause 43 | Clause 43 | Clause 46 | Clause 56 |
| Section 53 | Clause 30 | Clause 44 | Clause 44 | Clause 47 | Clause 57 |
| Section 54 | | | Clause 45 | Clause 48 | Clause 58 |
| Section 55 | Clause 28 | Clause 42 | Clause 46 | Clause 49 | Clause 59 |
| Section 56 | | | Clause 47 | Clause 50 | Clause 60 |
| Section 57 | Clause 35 | Clause 49 | Clause 48 | Clause 51 | Clause 61 |
| Section 58 | Clause 36 | Clause 50 | Clause 49 | Clause 52 | Clause 62 |
| Section 59 | | | Clause 50 | Clause 53 | Clause 63 |
| Section 60 | Clause 31 | Clause 45 | Clause 51 | Clause 54 | Clause 64 |
| Section 61 | Clause 37 | Clause 51 | Clause 52 | Clause 55 | Clause 65 |
| Section 62 | | | | | |
| Section 63 | Clause 38 | Clause 52 | Clause 53 | Clause 56 | Clause 66 |
| Section 64 | | | | Clause 57 | Clause 67 |
| Section 65 | Clause 41 | Clause 55 | Clause 54 | Clause 58 | Clause 68 |
| Section 66 | Clause 42 | Clause 56 | Clause 55 | Clause 59 | Clause 69 |

These Explanatory Notes relate to the Children and Social Work Act 2017 (c. 16) which received Royal Assent on 27 April 2017

| Section of the Act | Bill as Introduced in the Lords | Bill as amended in Committee in the Lords | Bill as amended on Report in the Lords | Bill as introduced in the Commons | Bill as amended in Committee in the Commons |
|---------------------------|--|--|---|--|--|
| Section 67 | Clause 43 | Clause 57 | Clause 56 | Clause 60 | Clause 70 |
| Section 68 | Clause 44 | Clause 58 | Clause 57 | Clause 61 | Clause 71 |
| Section 69 | Clause 45 | Clause 59 | Clause 58 | Clause 62 | Clause 72 |
| Section 70 | Clause 46 | Clause 60 | Clause 59 | Clause 63 | Clause 73 |
| Section 71 | Clause 47 | Clause 61 | Clause 60 | Clause 64 | Clause 74 |
| Schedule 1 | | | | | Schedule 1 |
| Schedule 2 | | | | Schedule 1 | Schedule 2 |
| Schedule 3 | | | Schedule 1 | Schedule 2 | Schedule 3 |
| Schedule 4 | | | Schedule 2 | Schedule 3 | Schedule 4 |
| Schedule 5 | | | | | |

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