

## CHILDREN AND SOCIAL WORK BILL

### Clauses 15-19

Second Reading, House of Lords – Tuesday 14 June 2016

#### About us

Article 39 is a new human rights charity which promotes and protects the rights of children living in state and privately-run institutions. We take our name from the part of the UN Convention on the Rights of the Child which entitles children to recover from abuse, neglect and other violations in environments which nurture their health, self-respect and dignity.

#### Overview

We have prepared a separate briefing on other aspects of the Children and Social Work Bill, which in summary:

- introduces seven corporate parenting principles, six of which are significantly weaker than existing local authority duties in the Children Act 1989 (Clause 1);
- specifies the kinds of services care leavers must be informed about (Clause 2);
- extends the age to which care leavers have a right to advice and support from 21 to 25 years, which is a very positive development (Clause 3);
- makes provision for promoting the educational achievement of children who are looked after, and those who were formerly looked after (Clauses 4-7);
- specifies the content of a permanence plan for children, which must be considered by the court when the local authority is applying for a care order: the specified elements are largely indistinguishable from the 'welfare checklist' in s1(3) Children Act 1989 (Clause 8);
- defines as a relative a prospective adopter with whom a child is placed (irrespective of the length of placement or the ascertainable views of the child) (Clause 9);
- empowers the Secretary of State to give directions to, and takeover, the running of children's services of a combined authority (two or more local government areas) (Clause 10);
- empowers the Secretary of State to establish a national Child Safeguarding Practice Review Panel to commission reviews into serious child safeguarding cases which are complex or raise issues of national importance (Clauses 11-14);
- regulates social workers (Clauses 20-38) and mental health social work training (Clauses 39 & 40).

#### Suspension of children's social care rights and entitlements

Clauses 15 to 19 gravely threaten children's social care rights and entitlements. They permit the suspension or modification of a children's social care requirement for three years, with the possibility of a further three-year extension, "*to test different ways of working with a view to achieving better outcomes ... or achieving the same outcomes more efficiently*". If these Clauses are enacted, virtually every statutory duty in respect of children, young people and families enshrined in the Children Act 1989 will exist in a permanent state of insecurity. All aspects of the Children Act 2004 will be similarly threatened. Subordinate legislation and other legislation listed in Schedule I of the Local Authority Social Services Act 1970 will be jeopardised too.

**There has been no public consultation about these radical changes.** We therefore, unusually for a Second Reading briefing, consider the possible consequences in some detail below.

Non-exhaustive examples of legal duties affected by Clauses 15-19:

- The duty to investigate when a child is suffering, or is likely to suffer, significant harm with the purpose of deciding whether action should be taken to safeguard or promote the child's welfare (s47, Children Act 1989)
- The duty to safeguard and promote the welfare of children in need, and to promote their upbringing with their families (s17, Children Act 1989)
- The duty to provide accommodation to children in need (s20, Children Act 1989)
- The duty to ascertain and give due consideration to the child's wishes and feelings when they are being assessed as a child in need, they are accommodated or looked after by the local authority, and when they are subject to a child protection enquiry (s17(4A), s20(6), s22(4) and s47(5A), Children Act 1989)
- The duty to appoint independent advocates for children intending to or making a complaint (s26A, Children Act 1989)
- The duty to ensure looked after children are visited by social workers (s23ZA, Children Act 1989)
- Obligations to care leavers (ss 23A-24D, Children Act 1989)
- The duty to provide short breaks for carers of disabled children (Paragraph 6 of Schedule 2, Children Act 1989)
- The duty to appoint a Director of Children's Services (s18, Children Act 2004)
- The duty to establish a Local Safeguarding Children Board (s13, Children Act 2004)
- The duty to provide information to the Children's Commissioner (s2F, Children Act 2004).

The Bill empowers the following to seek suspension or changes to children's social care requirements: 1) local authorities; 2) a specified person when a local authority is subject to government intervention; and 3) the Secretary of State or her nominee.

Consultation is only required with any Local Safeguarding Children Board partner *considered appropriate*. Before making regulations to suspend or modify legal obligations, the Secretary of State must consult the Children's Commissioner, HM Chief Inspector of Education, Children's Services and Skills, and any other person she considers appropriate. **There is no duty on local authorities or the Secretary of State to inform and consult local children, young people and families or professional and representative bodies (such as Children in Care Councils and parent advocacy groups)**. Any regulations removing obligations in subordinate legislation will be subject only to the negative resolution procedure. Regulations removing obligations in primary legislation will follow the affirmative resolution procedure. These are extremely weak safeguards for such far-reaching changes.

#### **Children's services and profit-making bodies**

Part I of the Children and Young Persons Act 2008, and its subordinate legislation, is affected by Clauses 15 to 19.<sup>1</sup>

Parliamentarians will recall the Government's consultation in 2014, which aimed to permit local authorities to discharge virtually all of their social services functions in respect of children through a contract with a third party provider. This was a major extension of the provisions in Part I of the Children and Young Persons Act 2008, which already enabled local authorities to delegate their social services functions in respect of children looked after and care leavers. In the event, the proposals were widely rejected: 94% of respondents (n=1315) opposed them.<sup>2</sup> Contracting out to a profit-making body was prohibited as a consequence.<sup>3</sup> Clauses 15-19 would allow this prohibition (which is in subordinate legislation) to be amended or removed altogether by negative resolution procedure. If the local authority has been subject to central government intervention, this could be achieved without any consultation with the local authority or local children, young people and families.

Clause 18(5) adds to the functions of a local authority which can be subject to intervention by the Secretary of State: “(d) any function conferred by regulations under section 15 of the Children and Social Work Act 2016”, which suggests subordinate legislation could be used to introduce new obligations also.

## **Implications of Clauses 15-19**

- **Local authority duties towards society’s most vulnerable children, young people and families would vary from area to area, with postcode rights to services and support. This would create confusion and uncertainty, with the concomitant risk of needs not being met.**
- **Local authority responsibility and accountability for children’s services would become fragmented. Over time, this could disappear altogether: similar legislation exempting local authorities from education law requirements was passed in 2002<sup>4</sup>, with an upper initial time limit of four years: this was removed altogether in 2006.<sup>5</sup> In May 2013, the Le Grand Review established by central government in respect of Doncaster children’s services recommended the complete transfer of the local authority’s functions in respect of children’s social care to an independent body.<sup>6</sup> This was strongly rejected by the local authority, which cited its legal obligations to children and families.<sup>7</sup> If legal obligations were to be suspended, there would be no brake on future radical transfer of local authority children’s services steered by central government.**
- **The removal of statutory duties would ensure local authorities have no liability for breach of obligations to children and young people, because the statutory functions would no longer exist. (The corporate parenting principles in Clause 1 of this Bill are not intended to be inserted into the Children Act 1989, and so will not be affected by Clause 15. However, these are significantly weaker than existing duties to looked after children in the 1989 Act).**
- **This would be a legal minefield for children subject to care orders, where a court could not be sure that a local authority in whose care the child has been entrusted would not, at a future date, seek to discharge itself of some or many of its legal obligations to the child.**
- **Removal or amendment of Regulation 5, The Children and Young Persons Act 2008 (Relevant Care Functions) (England) Regulations 2014 would enable profit-making bodies to run children’s services – including child protection.**
- **The Secretary of State consulting the Children’s Commissioner about the potential removal of the state’s legal obligations towards vulnerable children could interfere with her primary duty to promote and protect the rights of children.<sup>8</sup>**

7 June 2016

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<sup>1</sup> This is one of the pieces of legislation listed in Schedule I of the Local Authority Social Services Act 1970.

<sup>2</sup> Department for Education (June 2014) Consultation on powers to delegate social care functions. Government response, page 5.

<sup>3</sup> Regulation 5, The Children and Young Persons Act 2008 (Relevant Care Functions) (England) Regulations 2014.

<sup>4</sup> Chapter 1, Education Act 2002.

<sup>5</sup> Schedule 16, Education and Inspections Act 2006.

<sup>6</sup> Le Grand, J., Wood, A. and Gibb, M. (May 2013) Report to the Secretary of State for Education on ways forward for children’s services in Doncaster.

<sup>7</sup> Doncaster Council’s concerns were published by the [Local Government Lawyer](#) in August 2013.

<sup>8</sup> Section 2, Children Act 2004.