FIGHTING FOR CHILDREN'S RIGHTS IN INSTITUTIONAL SETTINGS

CHILDREN AND SOCIAL WORK BILL

Report Stage, House of Lords – 18 October 2016

Clauses 29-33

Article 39 is one of 31 organisations calling for the removal of Clauses 29-33 from the Bill:

Article 39 – Association of Lawyers for Children – Association of Professors of Social Work
Association of Youth Offending Team Managers – Bringing Us Together
British Association of Social Workers – The Care Leavers' Association
Children's Rights Alliance for England – Child Rights International Network – CoramBAAF
Coram Children's Legal Centre – Depaul UK – Howard League for Penal Reform
Institute of Recovery from Childhood Trauma – Liberty – Nagalro – Low Farm Therapy Centre
Napo – National Association of Independent Reviewing Officers
National Association for People Abused in Childhood – National Association for Youth Justice
The National Autistic Society – NYAS – Peer Power – Prison Reform Trust – Refugee Council
Standing Committee for Youth Justice – St. Michael's Fellowship – UNISON
Women's Aid – Youth Access

More than 140 experts, including many parents and carers of disabled children, have added their names to the Together for Children campaign for removal of the exemption clauses.[1] The site contains up-to-date extracts from statements about this part of the Bill ("far-reaching concerns").

Introduction

Article 39 welcomes and supports innovation, but we do not interpret Clauses 29-33 as falling within innovative and child-centred practice. We see the presentation of these Clauses as a smokescreen for deregulation.

Clause 29 establishes a fast-track process for area-by-area derogation of children's social care legislation. Acts of Parliament and associated regulations spanning 80+ years are affected. There has been no public consultation; this was not a manifesto pledge; and this part of the Bill has generated huge concern and opposition among professionals who work with children, young people and families; families themselves; and non-governmental organisations. Almost five months since the introduction of the Bill, the Department for Education has not published its rationale for introducing legislation that has the potential to lead to the wholesale deregulation of

[1] See https://togetherforchildren.wordpress.com/

children's social care. A request in July from the Chair of the Joint Committee on Human Rights, for details of safeguards to be introduced to diminish the risk of human rights violations, appears unanswered.[2] A LaingBuisson study commissioned by the DfE in 2014 on developing the potential for diversity in children's social care services has not been published. Successive freedom of information requests for the report have been refused, and a response to a parliamentary question last month indicated only that it would be released "in due course".[3]

The Government has promised two adjustments to the derogation process: the publication of a report with each exemption order, and greater use of the affirmative resolution procedure.[4] These do nothing to dent the fundamental threat inherent in exemptions, which is the loss of statutory duties to very vulnerable children and care leavers. Peers will be aware that it is extremely rare for statutory instruments to be rejected, whether they follow the negative or affirmative procedure. The Hansard Society reports that only 0.01% (1 in 10,000) of instruments have not been passed since 1965. It further reports that Peers and Members of Parliament are:

"confronted with an unpalatable 'take it or leave it' proposition: accept a Statutory Instrument even if they believe it is fundamentally flawed, or reject it entirely even if some elements are acceptable. This does nothing to encourage effective scrutiny and Member engagement with the issues".[5]

If Peers are unable to protect children's social care obligations in the way we strongly propose, we recommend the amendment in Annex A. The final section of this briefing provides a commentary on this alternative amendment, highlighting the protections it affords and how it builds upon existing legislation.

REMOVAL OF CLAUSES 29-33

Risks to children

The exemption clauses pose profound risks to children. Fundamentally, this is because statutory requirements will be removed according to geography. As the Delegated Powers and Regulatory Reform has commented:

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[2] Lord Nash was asked if he could respond to the question on Clauses 29-33 (and other questions) by **29 July 2016**. The Chair of the Committee, Harriet Harman MP, asked "What safeguards will the Government introduce to ensure exemptions from or modifications of requirements imposed by children's social care legislation [clause 29] do not lead to breaches of children's human rights under the ECHR and the UNCRC?": http://www.parliament.uk/documents/joint-committees/human-rights/correspondence/2016-17/160713_Lord_Nash_re_Children_and_Social_Work_Bill.pdf

[3] The parliamentary question was tabled by Lord Watson of Invergowrire on 14 September 2016. The response, dated 27 September, noted: "The Department for Education does intend to publish the LaingBuisson report entitled 'The potential for developing the capacity and diversity of children's social care services in England'. The Department intends to publish the report in due course." http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2016-09-14/HL1943/

[4] These concessions were made following the review of the Delegated Powers and Regulatory Reform Committee. The Government has rejected the Committee's recommendation that the affirmative procedure be used whenever regulations are being exempted or modified, and the regulations themselves originated from a duty in primary legislation.

[5] Delegated legislation: frequently asked questions, December 2015: http://blog.hansardsociety.org.uk/delegated-legislation-frequently-asked-questions/

"[The exemption clauses] will allow, in a very wide range of circumstances which cannot yet be predicted, the removal of statutory requirements which may themselves have been imposed with a view to ensuring that children are given certain protections, rights or benefits."[6]

Acts of Parliament pertaining to children in need, looked after children and care leavers in England will be subject to derogation for the first time. Clause 33 sets out the legislation affected by the preceding clauses: this spans 80 years, beginning with the social care provisions in the Children and Young Persons Act 1933, incorporating virtually every social care provision in the Children Act 1989, and ending with the Care Act 2014. As Peers have observed, new duties in this Bill will also be at risk of derogation.

No derogation from Acts of Parliament is permissible in adult social care, though Clauses 29-33 will permit the removal of 'transition to adulthood' entitlements from disabled children (until the age of 18) and from care leavers until the age of 21 or 25 years.[7] Peers will be aware that Clause 3 of this Bill, which extends advice and support duties to all care leavers up to the age of 25, will also be at risk of exemption.

Subordinate legislation governing children's social care is similarly threatened.

All of the examples produced to date involve the **removal of entitlements and safeguards**.

Peers may have been briefed by the DfE about 'innovative' plans to test out deregulation. Consistently missing from this narrative is information about what will happen to services when grants from the DfE's Innovation Programme are no longer available. In the absence of legal duties, and ring-fenced funding from central government, will local authorities continue to contract and fund 'innovative' provision, or deliver it themselves? This is highly unlikely. Research for the DfE investigated why local councils are not spending more on 'early help'. The researchers found that councils had coped with substantial funding cuts by prioritising meeting their legal duties to vulnerable children and adults. There is no legal duty to provide early help to families, even though this was recommended by Professor Eileen Munro after she was asked by Ministers to review the country's child protection system.[8] In relation to children living in foster care, children's homes and other care placements, the researchers noted, "participating councils reported that spending on looked after children was difficult to reduce as they had to meet statutory responsibilities" to these children.[9]

Separate research for the Local Government Association found that councils are struggling to cope

[6] Delegated Powers and Regulatory Reform, Review of the Children and Social Work Bill, 17 June 2016, para' 47. Read here: http://www.publications.parliament.uk/pa/ld201617/ldselect/lddelreg/13/1304.htm#_idTextAnchor001

[7] Clause 33 states Clauses 29 to 32 apply to all social care legislation pertaining to children under the age of 18, which includes the Care Act 2014 (extremely important to disabled children and their carers). In addition, all of the care leaving provisions in the Children Act 1989 are included.

[8] Munro, E. (May 2011) The Munro review of child protection: final report. A child-centred system. Department for Education, page 12.

[9] Aldaba and the Early Intervention Foundation (July 2016) Children's services: spending and delivery. Research report by Aldaba and the Early Intervention Foundation. Department for Education, page 36: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/535043/Childrens_services_spending_delivery_report_Aldaba_EIF_July_2016.pdf

with reduced government funding, and the very specialised care that some children need together "with the need to maintain a core statutory service, leaves very little room for discretionary cost savings and efficiencies".[10]

What follows is a brief discussion of the areas of children's services which have been publicly raised as candidates for exemptions:

1) Relaxing the assessment process for children's placements with family and friends[11]
2) Removal of independent reviewing officers from "low risk" children in care[12]
3) Disbanding adoption and fostering panels[13]
4) Removing looked after status from children remanded to custody[14]
5) Removing the duty to review a child's care when he or she is in a stable placement[15]
6) Relaxation of children's homes planning rules[16]
7) Removal of social workers from children in stable foster placements.[17]

EXEMPTIONS IN PRACTICE – EXAMPLES IN THE PUBLIC DOMAIN

1) Relaxing the assessment process for children's placements with family and friends

Details are sketchy about plans to exempt legal duties in this area of social care, but Lord Nash has referred to the 16-week time limit for assessments. We urge Peers to consider the expert advice of around 40 Chairs of Adoption Panels in London and South East England: "These cases are amongst the most complex and sometimes high risk that are presented to fostering panels, and there is considerable concern about any watering down of the scrutiny and level of assessment needed to safeguard children and ensure that their long-term needs are being considered as well as the provision of short-term care."[18] In addition to the statement made by Lord Nash at Second Reading, we are aware that at least one local authority claims exemptions will enable child-centred assessments. We cannot emphasise enough that neither primary nor secondary legislation is a barrier to this.

2) Removal of independent reviewing officers from "low risk" children in care

Peers will recall that the IRO role was created following sustained judicial concern, and the necessity of there being an independent person to scrutinise the discharge (or not) of local authority obligations post the Human Rights Act 1998. It is significant that the Government included IROs in its latest submission to

[10] Bryant, B., Parish, N. and Rea, S. (June 2016) Action research into improvement in local children's services. The Local Government Association and ISOS Partnership, page 48.
[11] Lord Nash, House of Lords Second Reading of the Bill, 14 June 2016: https://hansard.parliament.uk/lords/2016-06-14/debates/16061450000449/ChildrenAndSocialWorkBill(HL)
[12] Lord Nash, House of Lords Second Reading of the Bill, 14 June 2016 and Grand Committee debate, 11 July 2016: https://hansard.parliament.uk/lords/2016-07-11/debates/1607127000561/ChildrenAndSocialWorkBill(HL) Isabelle Trowler, Chief Social Worker for Children and Families, 2 June 2016: http://www.communitycare.co.uk/2016/06/02/qa-isabelle-trowler-practice-systems-professionalism-private-influence-social-work/
[13] Lord Nash, House of Lords Second Reading of the Bill, 14 June 2016 and Grand Committee debate, 11 July 2016.
[14] Lord Nash, Grand Committee debate, 11 July 2016.
[15] Lord Nash, Grand Committee debate, 11 July 2016.
[16] Report via Twitter from Association of Directors of Children's Services national conference, 8 July 2016: https://twitter.com/WardellR/status/751345007500652544
[17] Article by Andy Elvin, Chief Executive of Tact and member of Frontline Board, 18 July 2016: https://www.theguardian.com/social-care-network/2016/jul/18/children-and-social-work-bill-workforce-services
[18] Roy Stewart on behalf of CoramBAAF Independent Panel Chairs Group, London and South East, October 2016: Response to Clauses 29–32 of the Children and Social Work Bill 2016: http://corambaaf.org.uk/webfm_send/4517

the UN Committee on the Rights of the Child, as indicative of the UK's implementation of international law duties under the Convention on the Rights of the Child – "All children in care have an Independent Reviewing Officer who chairs reviews of the child's care plan and has a legal duty to make sure it takes the child's wishes and feelings into account".[19] Article 25 of the Convention requires the periodic review of the care and treatment of all children placed away from home and Article 12 requires that the child's views be given due weight in all matters affecting them.

3) Disbanding adoption and fostering panels

CoramBAAF, an organisation with more than 40 years' experience of adoption and fostering[20], has stated it: "could not be more opposed to this plan; believing that adoption and fostering panels play a crucial role in helping to decide whether someone is suitable to foster or adopt or that a child should be matched with prospective adopters. It is hard to think of a more important decision for a vulnerable child, and it is one that benefits enormously from the careful and independent scrutiny that panels provide".[21]

4) Removing looked after status from children remanded to custody

Children who are remanded to youth detention accommodation are automatically granted looked after status for the duration of the remand.[22] In July 2016, 167 children in England and Wales were remanded to custody.[23] Local authority duties towards this small group of children have been reduced already, supposedly to take account of the different home circumstances of the child.[24] Like many other organisations, Article 39 believes all children in custody should be granted looked after status, in recognition of their substantial vulnerabilities and the risks arising from being in a locked institution. One or two anecdotes of remanded children having supportive grandparents have been cited in defence of exemptions in this area. In response, we contend that it is implausible that a child remanded to custody has no unmet needs, or that stretched local authorities will impose support and services on children and families who are managing well.

5) Removing the duty to review a child's care when he or she is in a stable placement

Local authorities are required to review a looked after child's care and progress twice a year. For children settled in long-term foster care, the DfE advises local authorities that a review meeting may be held just once a year. Further dismantling of this fundamental safeguard would be extremely dangerous. Taking the North Yorkshire example given by Lord Nash at Grand Committee, this would mean more than 200 children subject to full care orders having reviews less than twice a year. We understand that reviews can be a painful reminder to some children that they are in care. However, we believe it would be professionally unethical to act as if children are not looked after, when they are. Further innovation is clearly required in order to develop practice so that all children experience their reviews as positive – but not the dilution of adults' legal responsibilities.

6) Relaxation of children's homes planning rules

Without further information, we can only speculate that recent changes to secondary legislation in respect

[19] HM Government (May 2014) The fifth periodic report to the UN Committee on the Rights of the Child, para' 40.
[20] The British Association for Adoption and Fostering (BAAF) was established in 1980 and became part of the Coram group in 2015.
[21] CoramBAAF media release, 23 June 2016: http://corambaaf.org.uk/node/8301
[22] S104, Legal Aid, Sentencing and Punishment of Offenders Act 2012. This came into force in December 2012.
[23] Ministry of Justice and Youth Justice Board for England and wales (9 Sept 2016) Youth custody report: July 2016.
[24] The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Children Act 1989) (Children Remanded to Youth Detention Accommodation) Regulations 2012.

of the location of children's homes could be vulnerable to exemption. Regulation 12 of The Children's Homes (England) Regulations 2015 requires the registered person of a children's home to ensure *"that the premises used for the purposes of the home are located so that children are effectively safeguarded"*. This legal requirement was introduced following reviews by the Office of Children's Commissioner and All Party Parliamentary Groups[25], which arose from greater awareness of child sexual exploitation.

7) Removal of social workers from children in stable foster placements

The chief executive of the UK's largest children's adoption and fostering charity, TACT, has shared in the media his desire to test out children in long-term foster care not having their own allocated social worker (we are not aware in which local authority this will be 'tested').[26] He has called this "client led innovation"[27], though the charity's materials for looked after children explain the vital role of social workers. The withdrawal of social workers could have extremely deleterious implications for looked after children nationally. A small-scale project led by this charity, which has committed to make £1 million savings a year in its takeover of Peterborough's Permanency Service[28], could lead to major legislative change affecting children everywhere. The Clauses do not require studies to be replicated. Peers will be aware of the DfE's plan to follow trials with "substantial changes to legislation" (see below).

We are not aware of any discussion of exemptions from **local authority duties towards care leavers**. However, legal obligations towards this group of young people have been specifically and separately listed in Clause 33 (sections 23C to 24D of the Children Act 1989). We therefore must assume that there is an intention to deregulate in this policy area. These young people are widely acknowledged to be the most vulnerable and disadvantaged in society.

Disregard of origins of legislation

It is particularly shocking to consider that the exemption clauses in this Bill could precipitate the destruction of the Children Act 1989. Lady Brenda Hale has described the "extensive programme of consultation" which led to the 1989 Act:

"The Children Act was the product of an extensive programme of consultation. The Interdepartmental Review of Child Care Law was established in 1984 in response to the Report of the House of Commons Social Services Committee on Children in Care. Twelve consultation papers were produced by the Department of Health and Social Security and comments were received from a great many interested bodies and individuals. The terrible death of Jasmine Beckford was then at the forefront of everyone's mind. The review was published as a Consultation Document in 1985

[25] The APPG for Runaway and Missing Children and Adults and the APPG for Looked After Children and Care Leavers (June 2012) Report from the joint inquiry into children who go missing from care; Berelowitz, S. (July 2012) Office of the Children's Commissioner: Briefing for the Rt Hon Michael Gove MP, Secretary of State for Education, on the emerging findings of the Office of the Children's Commissioner's Inquiry into child sexual exploitation in gangs and groups, with a special focus on children in care. The Department for Education conducted a consultation on these, and other, legislative changes, between June and September 2013: Department for Education (2013) Reforming children's homes care: consultation on changes to The Children's Homes Regulations 2001 (as amended) and The Care Standards Act 2000 (Registration) (England) Regulations 2010.

[26] Guardian newspaper article, 18 July 2016: https://www.theguardian.com/social-care-network/2016/jul/18/children-and-social-work-bill-workforce-services See also Article 39 Director's openDemocracy article, 29 September 2016: https://www.opendemocracy.net/uk/shinealight/carolyne-willow/england-s-bonfire-of-children-s-rights

[27] See Twitter discussion: https://twitter.com/Millinerstale1/status/783556961623220224

[28] See 29 September 2016 media release: https://www.tactcare.org.uk/news/2539-2/

but its principles and recommendations survived largely unchanged in the Children Act. Many comments were received on the review. There were also the further well publicised tragedies of Kimberley Carlile, Heidi Koseda, and Tyra Henry. These sources resulted eventually in the government's White Paper, published in 1987, before the Cleveland crisis arose. The Cleveland crisis may have been the catalyst which persuaded the government of the need for legislation, but it did not result in any substantial changes, and the previous recommendations were endorsed by the inquiry report. This was the result of a very thorough investigation chaired by Dame Elizabeth Butler-Sloss, who is now President of the Family Division, with the assistance of both social work and paediatric assessors."[29]

No evidence

Peers will be aware that when exemptions were introduced in education law, this was for the purpose of "contribut[ing] to the raising of the educational standards achieved by children in England".[30] Only 32 orders were made in seven years (December 2002 to November 2009).[31] This is because the DfE found that the innovations sought by schools did not require legal exemptions.

- In the first, second and third annual reports (2003, 2004 and 2005), the Dfe stated, "In practice not all innovative ideas require an exemption from legislation and the Innovation Unit has been able to explain and promote the flexibilities that exist";
- In the fourth annual report (2006), the DfE stated schools and local authorities "often discover that the Power is rarely needed as the necessary freedoms and flexibilities already exist";
- In the fifth annual report (2007), the Dfe stated, "In practice, it is clear that not all innovative ideas require an exemption from legislation and the [Power to Innovate] Team has been able to advise schools and LAs accordingly and to encourage them to make use of the freedoms and flexibilities that they already have";
- In the sixth annual report (2008), the DfE stated, "not all innovative ideas require an exemption from legislation, and applicants often discover that the necessary freedoms and flexibilities already exist";
- In the two final annual reports (2009 and 2010), the DfE stated, "Not all innovative ideas require an exemption from legislation, and applicants often discover that the necessary freedoms and flexibilities already exist".[32]

Two national consultations preceded the introduction of education exemptions, which further illustrates the conspicuous absence of any consultation in social care. The Government may argue that the negligible use of exemptions in education should offer reassurance. We would respond by pointing to the haste at which the DfE has drafted this part of the Bill, indicating strong motivation

[29] In defence of the Children Act, by Lady Hale: http://adc.bmj.com/content/83/6/463.extract
[30] Section 1(1) Education Act 2002.
[31] Department for Education (2010) Powers to facilitate innovation annual report for the academic year ending 31 July 2010. Article 39 has been informed by DfE that no orders have been made since November 2009.
[32] The 'power to innovate' annual reports can be accessed here: webarchive.nationalarchives.gov.uk/20130123124929/http://www.education.gov.uk/schools/leadership/schoolperformance/a0014624/power-to-innovate

to implement it. Furthermore, the Department has brought together eight local authorities (5% of the total number of local authorities) in order to "trial new ways of working and model excellent practice for local authorities right across the country to learn from".[33] Thirdly, unlike in education, the Bill empowers central government to impose children's social care exemptions on local authorities. Finally, the Chief Social Worker for Children and Families is championing social care exemptions, and she is the only social care professional on the Programme Investment Board[34], which advises Ministers how funds should be spent (nearly £200 million is available for innovation and improvement work, 2016-20[35]).

Notwithstanding the fact that the 'Partners in Practice' authorities were convened to implement this part of the Bill, and were *subsequently* cited as evidence that exemptions are necessary, only one senior manager has written in support of Clause 29. But his 500-word blog does not name a single Act of Parliament or regulation that prevents his authority from adequately protecting and supporting children and young people within their families, or operating excellent care and leaving care systems.[36] The reference to 'barn burning' misunderstands what is at stake.

Research standards

The DfE states that the use of exemptions will "create a controlled environment in which we could enable local authorities to test deregulatory approaches that are not currently possible, before taking a decision to make substantial changes to existing legislation that would apply across the board".[37] The term "controlled environment" may give the appearance of a research trial. However, we believe the clauses as currently drafted fall well below accepted research standards:

1) There is no requirement to conduct trials in a safe, ethical and transparent way
2) There is no requirement for independent evaluation
3) The aims of testing different ways of working are confounding. What is the meaning of "better outcomes under social care legislation" (Clause 29(1))? Does this mean, for instance, that the different way of working must achieve better outcomes than that prescribed by the (exempted) legislation? If so, why would the legislation impede this? Does "achieving the same outcomes more efficiently" mean the same results as achieved under the (exempted) legislation but with less expenditure? If this is the case, there surely would be no legal impediment to local authorities already achieving this outcome
4) There is no clarity as to how the Clause 29(1) aims will be tested – will outcomes before and after exemptions be evaluated in the same local authority, for example, or will outcomes in local authorities with and without exemptions (but with the same level of resources) be contrasted?

[33] Department for Education Memorandum on social work reform, for the Education Select Committee: www.parliament.uk/documents/commons-committees/Education/Department-for-Education-memorandum-on-social-work-reform.pdf
[34] See the Spring Consortium website.: http://springconsortium.com/about-the-programme/
[35] Department for Education (July 2016) Putting children first. Delivering our vision for excellent children's social care, page 27.
[36] Stuart Carlton is Assistant Director of Lincolnshire Children's Services. His blog can be read here: adcs.org.uk/blog/article/the-power-to-innovate
[37] Department for Education (July 2016) Putting children first. Delivering our vision for excellent children's social care, para' 72.

5) A policy conclusion seems to have been made prematurely, since we have been told that these trials will precede the Government "taking a decision to make substantial changes to existing legislation that would apply across the board". An alternative conclusion – that deregulation trials in children's social care are found to be dangerous and expose children to human rights violations – does not appear to have been considered

6) The "controlled environment" in which deregulation is tested will be one in which local authorities receive additional funds from central government for a designated period. A true test of deregulation would be how local authorities perform when statutory requirements have been removed and no ring-fenced funding is provided.

The Health Research Authority is a non-departmental public body established by the Care Act 2014 (though it has existed since 2011). It is the regulator for health and social care research and its remit includes intergenerational studies in social care where both adults and children, or families, are research participants. We are not aware of any similar body dedicated to children's social care, which is why our alternative amendment (see below) seeks to make use of the Authority's expertise.

Rule of law

The human rights organisation Liberty has produced a detailed briefing which considers, among other matters, how this part of the Bill "would allow subversion of the rule of law and proper parliamentary process".[38]

We are deeply concerned about the impact on children and care leavers of legal entitlements and local authority duties varying according to where they live and/or their corporate parents. Different legal duties could apply to children living in neighbouring authorities, in the same placement (children's home for example) but with a different corporate parent, or in different placements with the same corporate parent (siblings for instance).

We have sought a legal opinion on the lawfulness of exemptions in relation to obligations in the Human Rights Act 1998 and the Equality Act 2010, and will brief Peers on this shortly.

ALTERNATIVE AMENDMENT

The alternative amendment in Annex A has been drafted as a last resort measure, should Peers decide not to seek the removal of Clauses 29-33. It is drawn from Sections 2 and 5 of the Local Government Act 2000, which permit the repeal, revocation or disapplication of enactments when these prevent or obstruct local authorities from promoting or improving the economic, social or environmental well-being of their area.

[38] The briefing can be obtained here: https://www.liberty-human-rights.org.uk/sites/default/files/Liberty%27s%20briefing%20on%20clauses%2029-33%20of%20the%20Children%20and%20Social%20Work%20Bill.pdf

The alternative amendment permits pilots of exemptions in subordinate legislation for a two-year period. The aim of children's social care is safeguarding and promoting the welfare of children, so we have made improvements to children's welfare the objective of pilots.

We have ruled out piloting the derogation of Acts of Parliament, since we believe this could precipitate serious human rights violations and no evidence has been offered that primary legislation impedes the delivery of effective children's services. Given the depth of concern among Peers at previous stages it seems inconceivable that there would be support for the dismantling of primary legislation through statutory instruments.

We have built in the development of standards on safe, ethical and transparent research in children's social care, which mirrors the Health Research Authority's work in adult social care.

We have included a provision to safeguard children's rights to protection, services or assistance. We have excluded care leavers on the basis that these are highly vulnerable young people who are often living alone without any parental figure in their lives.

We have included a provision to bring an end to the pilot should it be causing detriment to the welfare of children.

The sunset clause of three years is necessary because this is a highly unusual means of developing the capacity and effectiveness of children's social care services. If the policy goes the same way as education exemptions, and local authorities make very little use of this piloting power, a relatively short time-frame will be justified. If it proves to be useful, Ministers could propose to extend the piloting provision at a later date (based on the evidence).

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 United Nations 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. Article 39's Director is a registered social worker (qualified in 1988).

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10 October 2016

ANNEX A: ALTERNATIVE AMENDMENT

Leave out Clauses 29 to 33 and insert the following new Clauses—

29 Power to amend or repeal subordinate legislation for piloting purposes

(1)If the Secretary of State thinks that requirements in subordinate legislation relating to children's social care prevent or obstruct local authorities from safeguarding and promoting the welfare of children in their area he may by regulations amend or disapply that instrument in relation to particular local authorities.

(2)The power under subsection (1) to amend or disapply subordinate legislation shall only be exercised for a particular period in order to pilot the benefits to children's welfare of not having the requirements imposed by a statutory instrument.

(3)Before exercising the power under subsection (1), the Secretary of State must publish standards on safe, ethical and transparent research in children's social care.

(4)In developing the standards under subsection (3), the Secretary of State must consult—

(a)the Health Research Authority, and

(b)the Children's Commissioner for England, and

(c)Her Majesty's Chief Inspector of Education, Children's Services and Skills, and

(d)Her Majesty's Chief Inspector of Prisons, and

(e)local authorities in England, and

(f)academic institutions in England concerned with research in children's social care, and

(g)children, and

(h)parents, and

(i)any other persons concerned with the welfare of children.

(5)The power under subsection (1) may be exercised in relation to a local authority only if the Secretary of State and the local authority consider—

(a)that the local authority can improve the welfare of children in its area without the requirements imposed by subordinate legislation, and

(b)the pilot under subsection (2) meets the standards set out in subsection (3).

(6)The Secretary of State may make regulations under this section relating to a local authority in England only if asked to do so by that authority.

(7) Regulations under this section may be made in relation to one or more local authorities in England.

(8) Regulations under this section are subject to the affirmative resolution procedure.

(9) Nothing in this section shall remove from any child any protection, services or assistance for which he would have been entitled to receive were it not for the pilot in subsection (2).

30 Procedure for orders under section 29

(1)Before the Secretary of State makes regulations under section 29 he must consult—

(a)the local authority's safeguarding partners, and

(b)representatives of local government, and

(c)the Children's Commissioner for England, and

(d)Her Majesty's Chief Inspector of Education, Children's Services and Skills, and

(e)Her Majesty's Chief Inspector of Prisons where the matter concerns a child in or leaving custody, and

(f)children and parents affected, or likely to be affected, by his proposals, and

(g)such other persons with an interest in children's welfare in the area.

(2)If, following consultation under the preceding provisions of this section, the Secretary of State proposes to make regulations under section 29 he must lay before each House of Parliament a document which—

(a)explains his proposals, and

(b)reports any representations received under subsection (1), and

(c)sets out the intended benefits to the welfare of children in the area, and

(d)describes how the pilot meets the standards set out in section 29(3).

(3)In exercising the power under section 29, the Secretary of State must not make regulations which cause, or are likely to cause, detriment to the welfare of children in that area.

(4)Where a document relating to proposals is laid before Parliament under subsection (2), no draft of an order under section 29 to give effect to the proposals (with or without modifications) is to be laid before Parliament until after the expiry of the period of sixty days beginning with the day on which the document was laid.

(5)In calculating the period mentioned in subsection (3) no account is to be taken of any time during which—

(a)Parliament is dissolved or prorogued, or

(b)either House is adjourned for more than four days.

(6)In preparing a draft order under section 29 the Secretary of State must consider any representations made during the period mentioned in subsection (4) above.

(7)A draft order under section 29 which is laid before Parliament must be accompanied by a statement of the Secretary of State giving details of—

(a)any representations considered since the proposals were laid before Parliament, and

(b)any changes made to the proposals contained in the document laid before Parliament as a consequence of these representations.

31 Duration

(1)The pilot period must not be longer than 2 years beginning with the day on which an order comes into force.

32 Report of pilot

(1)The Secretary of State must publish the results of the pilot within 12 months of its completion.

33 Cancellation of pilot

(1)The Secretary of State shall by regulations make provision to reinstate requirements in subordinate legislation in respect of a local authority undertaking a pilot under section 29, where—

(a)he has been notified the pilot under section 29 is causing, or is likely to cause, detriment to the welfare of children, and

(b)it is not in the interests of children to continue such a pilot.

34 Expiry of arrangements under this Part

(1)Sections 29 to 33 cease to have effect after a period of three years beginning with the day on which this Act is passed ends.

35 Interpretation

In sections 29 to 34—

- "subordinate legislation relating to children's social care" means—

  (a)statutory instruments made in respect of primary legislation specified in Schedule 1 to the Local Authority Social Services Act 1970 so far as relating to those under the age of 18;

- "local authority in England" means—

  (a)a county council in England;

  (b)a district council;

  (c)a London Borough council;

(d)the Common Council of the City of London (in their capacity as a local authority);

(e)the Council of the Isles of Scilly;

(f)a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009;

- "safeguarding partner", in relation to a local authority area, has the meaning given by section 16E(3) of the Children Act 2004.