

13 January 2017

## **Children and Social Work Bill: Power to test different ways of working**

### **Purpose**

For information.

### **Summary**

This paper updates members on recent amendments to the Children and Social Work Bill, with a particular focus on the controversial “power to test different ways of working”, and seeks member guidance on the LGA’s future position in relation to these clauses.

### **Recommendations**

The Children and Young People Board is asked to;

1. Note the update.
2. Advise on the LGA’s future position in relation to the power to test different ways of working.

### **Action**

Officers to take action as directed by members.

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## **Children and Social Work Bill: Power to test different ways of working**

### **Overview**

1. The Children and Social Work Bill completed its passage through the House of Lords on 23 November, and has now entered Committee Stage in the House of Commons. Although the Bill contains important provisions in relation to corporate parenting principles, a local offer for care leavers, care planning and new flexibilities around multi-agency safeguarding partnerships and serious case reviews, much of the debate so far has centred on a series of controversial “power to test different ways of working” clauses.
2. These clauses would allow local authorities to apply for the relaxation of specified aspects of children’s social care legislation, initially for a three-year period with the possibility of a further three-year extension and a permanent exemption if deemed successful. The provisions were removed by the Lords, but the government has since tabled them again in the Commons with a number of additional safeguards.
3. The LGA has briefed strongly on the Bill, and the power to test different ways of working in particular, throughout its passage through Parliament. While we have been broadly supportive of the principle of allowing councils to shape provision around the needs of children and young people rather than the constraints of legislation, we have also been clear that any decision to exempt an authority from social care legislation must always be shown to be in the best interests of local children and young people.
4. With a number of important concessions having now been granted, we would welcome the Board’s steer on whether the LGA should now fully support the amended clauses.

### **The amended power to test different ways of working**

5. The powers are designed to allow local authorities to apply for exemption from a requirement imposed by children’s social care legislation, or to modify the way in which that requirement applies.
6. We are pleased that the government has listened to our concerns and more closely linked the proposed powers to outcomes for children and young people. Additional safeguards have also been introduced to limit the range of legislation that councils can be exempted from (excluding, for example, sections 17 and 47 of the 1989 Children Act, which covers support for children in need and children at risk of harm), and to prevent the exemptions being used to overturn the prohibition on profit making bodies carrying out children’s social care functions.
7. The government has also now proposed the creation of an expert panel to oversee any applications for legislative exemptions. While we were pleased the government listened to arguments made by the LGA and stated during earlier stages in the Bill that the expert panel would include representation from the voluntary sector, a practice expert, and local government, we remain concerned that only the Children’s Commissioner and Ofsted Chief Inspector are listed as members on the face of the Bill.

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8. Throughout the Bill's progress, we have been clear that any applications to use these powers should always be council-led, allowing local authorities to make decisions based on the needs of local children and young people that they know best. We are therefore particularly pleased that the government have removed provisions that would have allowed the Secretary of State to make these decisions on behalf of local authorities in intervention without any form of local democratic scrutiny or consultation with local partners.

### **Opposition to the provisions**

9. In spite of these concessions, opposition to the proposals remains widespread. In particular, concerns continue to be raised that the Bill will introduce a profit motive into children's social care services, that the freedoms proposed are not necessary for innovation, and that it is wrong to "experiment" with services for vulnerable children.
10. Together for Children, a network of organisations and individuals, has formed to oppose the innovation clauses "because they threaten to remove or change vital, universal duties which have evolved over many decades to meet the needs and protect the rights of vulnerable children and young people."<sup>1</sup> The network includes the British Association of Social Workers, the Care Leavers' Association, the Fostering Network, the National Association of Independent Reviewing Officers, the Refugee Council and UNISON.
11. Together for Children argues that in the face of significant funding cuts to local government, non-statutory early intervention services have been significantly reduced because meeting legal duties towards the most vulnerable children has been prioritised. They argue that any relaxation of the legal framework governing children's services could leave councils "tempted or pressured into making cuts to services and support that days, weeks and months before were accepted as vital."<sup>2</sup>

### **Support for the provisions**

12. Putting Children First, the policy paper outlining the government's social care reforms, stated that the intention behind the clauses was to "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". Government have consistently denied that they have any plans to "privatise" child protection.
13. A number of local authorities have publically stated their interest in making use of these powers, including the Tri-borough, Achieving for Children (Kingston and Richmond), Lincolnshire and Leeds. Some authorities have provided examples of potential uses of the powers, including:

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<sup>1</sup> <https://togetherforchildren.wordpress.com/>

<sup>2</sup> <https://togetherforchildren.wordpress.com/risks/>

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- 13.1. Hampshire has suggested using the powers to explore whether Independent Reviewing Officers could be used in a more targeted way, allowing for more support for children who need it, while removing IROs from reviews where children are in stable placements and say they do not want an IRO present.
  - 13.2. Hampshire has also highlighted that if a disabled child uses intensive break provision for more than 17 days at a time or the short breaks account for more than 75 days of the year, then by law the child must have the full care planning and review process for looked after children, which families do not always want and can find intrusive. They have suggested working with families to look at flexibilities in cases where there are no safeguarding concerns, to look at how it can work better for children and families.
  - 13.3. North Yorkshire has suggested trialling freedoms around assessments for friends and family for looked after children, who currently have to go through the same assessments as those carers joining the fostering workforce and committing to a range of placements over a length of time, despite only looking after one young person who they already have a relationship with.
14. There has also been support for the clauses from organisations including the Society of Local Authority Chief Executives, Catch 22 and the Chief Social Worker, as well as Professor Eileen Munro, whose Independent Review of Child Protection in 2011 argued for a children's services system that reflected the complexity and diversity of children's needs.

#### **LGA view**

15. The LGA is generally supportive of greater freedoms for local authorities to test different ways of working. The children's social care landscape has changed significantly since the last major legislative reform brought about by the 2004 Children Act. Demand for child protection services has increased significantly, funding has fallen across the public sector, and a heightened understanding of threats such as child sexual exploitation, gang activity and radicalisation has necessitated new approaches to safeguarding outside of family settings. The structural landscape has also changed considerably and continues to do so, with greater devolution and combined authorities offering the potential for new delivery models that may not fit comfortably within the existing legislative framework.
16. We have therefore been broadly supportive of these clauses in our briefings to Parliament, particularly in light of the concessions granted during the Bill's progress through the Lords. The amended clauses leave decision making firmly in local authority hands, and include a number of safeguards which aim to allow for proper scrutiny of any exemption requests.
17. However, we are conscious that considerable opposition to these powers remains both within and outside Parliament, and we would therefore welcome the CYP Board's steer on the LGA's future position.

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**Financial implications**

18. There are no specific additional financial implications for the LGA arising from this report.

**Implications for Wales**

19. Although some elements of the Children and Social Work Bill apply to England and Wales, the freedom to test different ways of working outlined in this paper apply to England only.