Briefing on New Clauses 2 to 9 of the Children and Social Work Bill 2016 by Family Rights Group

January 2017

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Introduction

Family Rights Group

1. Family Rights Group, which has drafted this briefing, is the charity in England and Wales that works with parents whose children are in need, at risk or are in the care system and with members of the wider family who are raising children who are unable to remain at home. Our expert advisers, who are child welfare lawyers, social workers, or advocates with equivalent experience, provide advice to over 6000 families a year via our free and confidential telephone and digital advice service. We advise callers about their rights and options when social workers or the courts make decisions about their children's welfare. We also campaign for families to have their voice heard, be treated fairly and get help early to prevent problems escalating. We lead the policy work of the Kinship Care Alliance and Your Family, Your Voice and champion Family Group Conferences and other policies and practices that keep children safe in their family network.

New Clause 2 of the Children & Social Work Bill

2. The Children and Social Work Bill is an important opportunity to improve outcomes for vulnerable children, including those who cannot live with their parents. New Clauses 2 -9 are an attempt to give greater freedoms and flexibilities to individual local authorities to innovate and to trial new ways of working. Whilst we understand the motivation for these clauses, we are extremely concerned about the extensive powers that these clauses give to the Secretary of State, at the request of a local authority, to exempt individual authorities from their duties under primary child welfare legislation and/or regulations.

3. We have previously shared with government our concerns and proposals for a way forward, by describing what, in our view, are the minimum safeguards that need to be in place to allow some flexibility in the application of current regulations and guidance, whilst maintaining the integrity of the child welfare system and the rights and protections enshrined in statute. We recognise that the Government has addressed some of these concerns in its amendments, in particular by making the purpose of the section clearer than originally set out in the Bill. We also welcome the Government's acknowledgement in the letter from the Minister for Vulnerable Families and Children of 7th December 2016, of the depth and breadth of concerns. We similarly welcome the Government's recognition that the scrutiny and safeguards to be applied when considering local authorities' requests for permission to test different ways of working, could, and indeed should, be more robust that originally provided for in the Bill. Despite amendments put forward by the government, we remain very concerned by the following matters:-

   (i) The ability of local authorities to seek, and the power of the Secretary of State to grant, exemptions from **primary legislation** and lack of evidence of the need for this; and

(ii) The government's proposal to mark out certain sections of primary legislation as containing '**core duties'** to protect children.

Exemptions for local authorities from primary legislation

4. As stated in the House of Commons information sheets "Public acts are legislation of universal application and change the general law." Primary legislation sets out the framework which must be applied in all localities within the nation regardless of local circumstance and thus in doing so regulates state interference in family life, sets out the rights of individuals including children to secure services and support and makes the state, and 'organs of the state' accountable. The children's social care legislation that would be affected by these clauses has been incrementally introduced over a long period of time, each change taking place after a process of proposal, consultation, parliamentary scrutiny and debate. Family Rights Group maintains the position that if a change is to be made to primary legislation then it should have national application. If legislation is inadequate, outdated, or ineffective, then amendments should be made to such legislation through the normal legislative and consultation process, rather than through a piecemeal approach allowing one or two authorities to get dispensation.

5. Family Rights Group is therefore extremely concerned about the provision to allow individual authorities to be exempt from, or modify, primary legislation. We do not believe that a case has been made for such a drastic step and are extremely concerned that children and families in one locality could be deprived of their fundamental rights and entitlements that are still afforded to other children and families across the country.

6. Our anxiety is further increased by other legislative protections of the rights of children and families being in jeopardy. This includes proposals from the Government to abolish the Human Rights Act and talk in some circles of Britain leaving the European Convention of Human Rights.

7. There currently exists in section 2 of the Local Government Act 2000 a power for local authorities to take any steps which they consider are likely to promote or improve the economic, social or environmental well-being of their local community. The only restriction on these powers is that set out in section 3, that the action must not be taken if it is subject to statutory prohibitions, restrictions or limitations specifically set out in legislation. These proposed clauses in the Children and Social Work Bill go that step further, and permit local authority to take action even if it is prohibited by primary legislation, by allowing them to ask the Secretary of State to exempt them from that statute, or part of it.

8. The clauses are drafted so widely that they can apply to the majority of legislation passed in the last 50 years that impacts on children's social care, including:

    - the Children Act 1989 (bar those duties which the government amendment now describes as 'core duties'),
    - Part 1 of the Children and Young Persons Act 2008, which limits the extent to which local authorities can delegate their functions in relations to children's services; and
    - s.2 of the Chronically Sick and Disabled Persons Act 1970, which places a duty on local authorities to meet the needs of disabled children. There remain serious constitutional questions that must arise in giving such broad, far reaching powers to the Secretary of State.

9. It remains our position that there is a lack of evidence as to the need to exempt local authorities from primary legislation. There remain very limited examples, and little requisite detail, about the different ways of working that local authorities would seek to pursue which would require exemptions from primary legislation as opposed to exemptions from regulations or guidance.

Government amendment: Identification of core duties in respect of which permission to test different ways of working may not be sought/granted

10. In his letter of 7th December 2016, the Minister stated:-

"…- *I am ruling out the use of the clauses to revisit certain core duties that set out what local authorities needs to do to protect children, such as some of those contained in section 17, 20, 22 and 47 of the Children Act 1989 and sections 10 and 11 of the Children Act 2004. These parts of legislation set out who is eligible for support and the duties of local authorities towards them, and by taking them out of scope, we are making clear that power could never be used to revisit the fundamentals duties of local authorities to support and safeguard vulnerable children."*

11. The government has accordingly amended the Bill to reflect that those specific sections of primary legislation not be the subject of a request for, or grant of, permission to test different ways of working.

12. We are concerned that:-
    (i) Doing so serves to concomitantly create the notion of 'non-core' welfare duties towards children;
    (ii) To relegate all other duties to such a lesser status is to introduce an unprecedented 'weighting' to child welfare duties; and
    (iii) This ignores the fact that the provisions contained within primary legislation are designed to co-exist and interact to provide a regime of protection for children and support for children and their families.

13. The following illustrates the unintended consequences and inconsistencies that could result from the government's proposed approach.

Example

The government has identified the duties to looked after children in section 20 Children Act 1989 ***as core duties***; this includes the duty on local authorities in section 20(1) CA 1989:

'Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—
(a) there being no person who has parental responsibility for him;
(b) his being lost or having been abandoned; or
(c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care..'

The duty in section 22A CA 1989 (which is ***not identified as a 'core duty'*** provides that when a child is in the care of a local authority, it is their duty to provide the child with accommodation. Further in section 22C(3)to (6), the local authority has a duty to accommodate a child first with parents, and if that is not appropriate, with family or friends or other connected person. To understand the totality of the duty to children who are accommodated by the local authority, it is necessary to read these sections together. To identify one section as a 'core duty' and not the others, is misleading and severely undermines the protections for families and children that the Act is intended to provide.